Brought from the Lords, 25 August 1881.

REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON

IRISH JURY LAWS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
25 *August* 1881.

430.

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REPORT.

BY THE SELECT COMMITTEE appointed "to inquire into the operation of the IRISH JURY LAWS."

ORDERED TO REPORT,

THAT the Committee have met and agreed to the following Report :—

1. THE recent history of the Irish Jury Laws may be said to date from the passing of the Act of 1871, commonly known as Lord O'Hagan's Act.

The general effect of this statute was:

1st. To substitute a rating qualification for the old freehold and leasehold qualification required by the Acts then in force.

2nd. To relieve the sheriffs from the duty of selecting the jury panel.

3rd. To substitute for that selection a system of service by alphabetical rotation.

2. The rating qualification was originally fixed by the Act of 1871, for special jurors at a minimum ranging in the different counties from 100 *l.* to 30 *l.* for land tenements or hereditaments, and for common jurors at a minimum of 20 *l.* for land tenements and hereditaments in the counties, and at a minimum varying between 20 *l.* and 12 *l.* for land tenements and hereditaments in cities, boroughs, and villages.

3. The Act of 1871 was subsequently amended by a temporary Act passed in 1873, and by two permanent Acts passed in 1876, dealing respectively with the questions of qualification and of procedure.

Under the latter of these Acts the qualification of the common jurors was raised to 40 *l.* for land in the counties; but reduced to 10 *l.*, and in some counties to 6 *l.*, for dwelling-houses and offices; the qualification of the special jurors was also raised, the minimum being fixed in some of the counties as high as 150 *l.*

4. We have received evidence from a considerable number of witnesses connected with different parts of Ireland and holding professional or official positions which have afforded them opportunities of forming an opinion on the general expediency of the new departure involved by the Act of 1871. To the principles upon which that Act was based the judgment of these witnesses is, as a rule, decidedly favourable.

5. The evidence which we have taken leaves no doubt (i), that the qualification required by the Act of 1833 (3 & 4 Will. IV. c. 91), which remained in force till 1871, had become virtually obsolete, and that, owing to the scarcity of qualified jurors, the sheriffs, in order to obtain a jury panel, were in some instances actually driven to empanel persons not legally qualified; and (ii) that the right of selection by the sheriff, though probably not often abused, had created a general impression that it was possible to pack the juries, and consequently had led to a widespread suspicion with regard to their impartiality. Molloy, 597

6. Even those witnesses who are least favourable to the new system are not prepared to recommend a return to the old, in so far as it permitted the selection of the jurors by the sheriffs. We share this opinion and believe that, in order to maintain Nelligan, 3409 Morris, 3652. Elrington, 3783. M'Donnell, 3551. Justice Fitzgerald, 4172.

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maintain public confidence, it is absolutely necessary that the selection of jurors should depend upon a fixed system of rotation, and not upon the discretion of any public official.

We believe, further, that whatever modifications may be possible in the law dealing with the qualification for service on the jury, that qualification must, as a general rule, be founded, as at present, upon the rating of the person qualified.

7. We are of opinion that in one respect the present rotation of service is capable of improvement.

Under the existing law the names of the jurors are arranged in groups under their initial letters, and the panel is formed by taking a name in turn from each group.

It follows that after a time the groups represented by those initial letters which are least common are exhausted, until at last it becomes necessary to form the panel entirely of jurors taken from those groups which, owing to the larger number of names included in them, are the last to be exhausted.

It thus happens that the same jury sometimes contains several persons of the same name who may all be members of the same family or of the same firm.

8. Such a result is obviously undesirable and might, we think, be avoided if the names in the jury list were first arranged in alphabetical order and then broken up into groups of, say, 25 names each, from each of which in turn a name might be taken until each group became simultaneously exhausted. The same result might be arrived at, if instead of selecting the jurors alphabetically as at present, the numbers opposite the names of the jurors in the sheriff's list were placed in a ballot box and drawn in open court by the sheriff or other public officer as might be required for service on the panel. The numbers that have been drawn should not be returned to the box till the whole list had been exhausted.

Ilnggard, 829.
Rocke, 990.
Barry, 1333.
Whelan, 1553.
De Moleyns, 1004
Hamill, 1708-9.
Mitchell, 1910
Morphy, 1978.
Ottagan, 2133.
Gibson, 2276.
Boyd, 2242.
Whitney, 2559.
Kelly, 3011.
Dowling, 3134.
Lloyd, 3192. Noligan, 3409. M'Donnell, 3540. Lawson, 4030. Fitzgerald, 4177.

9. While we are able to record a general concurrence on the part of the witnesses in the view that the legislation of the last 10 years has proceeded upon sound principles, we have found that the same unanimity does not exist with regard to the manner in which that legislation has worked.

10. In the greater part of the country, including the whole or nearly the whole of the purely agricultural districts, we have ascertained that the common juries are composed almost entirely of farmers, or of small tradesmen who, if not farmers themselves, are intimately connected with the farming class.

11. A variety of circumstances contributes to exclude from the jury box the small minority of the jury list whose social position, education, and intelligence is superior to that of the ordinary mass of the jurors. Amongst these circumstances we may refer particularly to the following:—

1. A number of such persons, not large in itself, but forming a large proportion of the whole, is required for service on the grand juries: persons thus serving as grand jurors escape service on the common jury.

2. If any cases are tried by special jury a certain number of jurors possessing the higher qualification required for special juries are in like manner appropriated for this service, and in consequence are often not available as common jurors.

3. It is, we are led to believe, the fact that men of higher social position than the ordinary jurors are as a rule disinclined to take their share of the burden of service and frequently avoid it; such persons submit to the imposition of a small fine, or to the chance of incurring a large one sooner than associate with men of the class usually to be found serving as common jurors.

4. The right now allowed to the accused of challenging without cause 20 of the jurors in cases of felony, and six in cases of misdemeanour, also operates in the same direction. It is we are assured the invariable practice in many parts of the country for the defendants to challenge any juror who from

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from his position, or even from his appearance, presumably belongs to a class superior to that of which the accused is a member.

12. We have endeavoured to ascertain in what manner the juries, whose usual composition we have thus described, have performed their duties.

13. From some parts of the country strong testimony has been borne to the integrity and intelligence with which the juries have acted.

In most parts of Ulster, and in some other districts which have remained undisturbed during the recent excitement, the conduct of the jurors has, as far as we have observed, rarely given rise to unfavourable comment.

14. We regret, however, to find that in other parts of the country, and notably in those where agrarian agitation is most prevalent, there is much cause for complaint.

15. This misconduct on the part of the juries is, in the opinion of most of the witnesses, limited to cases in which the offence comes within certain well-defined categories. These are :—

1. Crimes arising out of disputes as to the occupation of land.
2. Crimes arising out of political or religious antagonism.
3. Aggravated assaults.

In many counties it seems to be admitted that while in civil cases, or in criminal cases into which no "disturbing element" enters, the juries will ordinarily find a verdict in accordance with the evidence, it is idle to expect them to do so in any cases coming within the above descriptions.

Purcell, 7. Blake, 131. Jones, 515. Molloy, 622. Byrne, 744. Huggard, 838. 852. 948. Slacke, 988. 994. 997. Reade, 1051. 1067. Hamilton, 1117. Barry, 1335. 1427. Whelan, 1559. De Moleyns, 1608. Hamill, 1765. Mitchell, 1911. 1917. Morphy, 2002. 2016. 2026. O'Brien, 2194.

In such cases grievous miscarriages of justice have been of frequent occurrence.

16. This tendency which, in the opinion of many witnesses, manifested itself previous to the recent disturbances, has, as was to be anticipated, become more conspicuous during the prevalence of the agitation which has overspread the country lately. In places where that agitation is most deeply seated the law has been again and again violated with impunity, not only because of the difficulty of obtaining evidence, but because even where it has been found possible to obtain it, the jurors have refused to find verdicts in accordance with the facts.

Gibson, 2299. Boyd, 2430. Whitney, 2570. Fitzgerald, 2895. Kelly, 3029. 3036. Dowling, 3168. Lloyd, 3194. Hamilton, 3286. Leahy, 3614. 3638. Morris, 3653. 3675. 3734. 3756. Bolton, 3872. 3880. Lawson, 4029. 4048. Fitzgerald, 4187. 4191. 4196.

17. In such cases, though the criminal may have been detected in the act of committing the crime, though he may have been arrested bearing upon his person traces which could leave no doubt as to his guilt, though his identity may have been clearly established, the jury have again and again either disagreed or found a verdict of acquittal.

Lloyd, 3180. 3216. 3185. Neligan, 3409. Bolton, 3840-3869. Lawson, 4041–4054.

These findings have repeatedly provoked the strongest censure on the part of the judges, and have in some instances led to the postponement of any remaining cases, upon the ground that it was useless to submit them for trial. On other occasions the prosecution has been compelled to accept a plea of guilty, upon an understanding that the defendants were to be liberated without punishment on their own recognizances. It is scarcely possible to conceive a more complete frustration of justice, or one more calculated to demoralise society.

18. We have inquired into the causes to which this conduct on the part of the jurors is to be ascribed. It has been attributed by different witnesses to (1) want of intelligence, (2) intimidation and fear, (3) sympathy with the accused person, or (4) a general disinclination to support the law.

19. With regard to the first of these explanations, it must, we think, be admitted that occasions may have arisen in which the juries have been composed of persons not possessing sufficient intelligence or education to enable them to sift the evidence, particularly where it is of a circumstantial kind, and where the defence set up has been ingenious enough to confuse their minds. It may, too, have sometimes happened that jurors placed upon the list for the first time, under the newly introduced qualification, and consequently unaccustomed

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to the performance of the duties imposed upon them, have performed those duties in an ignorant and unintelligent manner.

20. On the other hand, we have no reason to believe that want of intelligence is a characteristic of any class in Ireland, and we are strengthened in our conviction that it is not to this explanation which we must look, by the fact to which abundant testimony is borne, that in the case of ordinary crimes the jurors have generally not shown themselves deficient in ability to distinguish between guilt and innocence, or reluctant to convict upon sufficient evidence.

Whitney, 1573.
J. P. Hamilton, 3285.

21. We should add that there is every reason for believing that familiarity with their duties, at first novel and onerous, has rendered the new jurors more competent for the discharge of those duties than they were when first called upon to perform them.

22. Passing to the second explanation which has been suggested to us, the evidence leaves no room for doubt that in many cases the fears of the jurors have been operated upon, sometimes by direct intimidation, sometimes by the apprehension of consequences morally or materially injurious to themselves. Members of the jury panel are, we learn, not unfrequently subjected to pressure in anticipation of a coming trial. It is obvious that in districts where the whole agricultural community is penetrated by a widespread organisation, which habitually enforces its rules by the maltreatment or persecution of those who disregard them, it must be difficult or impossible for jurors, themselves members of that community, to withstand the influences to which they are exposed.

Hamilton, 3284.

23. The sympathies of the jurors are, moreover, under the circumstances described, as likely to be appealed to as their fears; those sympathies, considering the fact that they belong almost entirely to the farming class, must, in all trials arising out of or connected in any way with the occupation of land, be actively engaged upon the side of the party whose interests are identical with their own. Where the jurors carry with them into the box the feelings and prejudices of the class to which they belong, intimidation becomes superfluous.

24. In such cases the laws which the jurors are called upon to enforce, are out of harmony with their own convictions, and are therefore deliberately disregarded in favour of an unwritten code more congenial to their prejudices, and possibly considered by them to be more obligatory upon their own consciences.

Huggard, 948–9.

25. In illustration of this view, we quote the following extracts from the evidence given by Mr. S. Huggard, clerk to the Crown for the county of Kerry:—

"As to their (the jurors) sympathy being with the law or against it, one must "know Ireland very well to enable one to say what the motives are which "operate with them. I would be unwilling to say that, in the ordinary sense "of the word, the verdicts, though unsatisfactory, are corrupt . . . . To "do a corrupt thing a man must wilfully do what he believes to be wrong. "These men are led to believe, by persons upon whose judgment they rely, and "in whose opinions they have perfect confidence, that the existing land laws are "not only unjust, but that they are iniquitous. They are also told that there "are certain inalienable rights which no human laws have a right to tamper "with or to infringe, and they enter the jury box fully recognising the fact "that they have either to disregard the evidence and their oaths, or to do what "they believe to be an act of injustice in finding a conviction against persons for "doing an act which the law calls an offence, but which they believe to be "justifiable, or perhaps meritorious."

Hamill, 1772.

26. Again, Mr. Hamill, chairman of the county of Roscommon, observes, "They do not think it is anything very flagrant to be indicted for an assault. "They do not look upon it as a crime, such as they would the taking of a man's "purse or anything of that kind."

Dowling, 3141.

27. The same idea is expressed in the evidence of Mr. Darcy Dowling, a solicitor of large experience in the defence of prisoners. "In Ireland," says this witness, "they draw very wide distinctions between what they call crimes "against the law and what they call 'dirty crimes,' that is to say, larceny and "robbery. In my locality they always call anything that is against the law a "'clean' crime."

28. Another

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28. Another witness, Mr. Bolton, Crown Solicitor for Tipperary, makes the following observation:—"There is no difficulty whatever in getting convictions "for robberies or larcenies, because in Tipperary these offences have always "been regarded as disgraceful . . . If you cross-examine a man, and you "ask him 'were you convicted?' he will say, 'Yes, I was; but, thank God, "it was not for anything disgraceful.'"

29. We may refer in this connection to the remarkable evidence given before us by Mr. Justice Fitzgerald, in the passage referred to on the margin. Justice Fitzgerald, 4190

30. This disposition on the part of the jurors to regard different classes of offences from a wholly different point of view is, no doubt, strengthened by the fact that while in ordinary cases, *e. g.*, of larceny, the criminal is more often than not a member of the criminal classes, and unconnected with the society of the neighbourhood; in cases of assault or of agrarian crimes the accused person is frequently a member of or closely connected with the very class from which, as we have shown, the jurors are almost entirely drawn.

31. We have received many suggestions for the improvement of a state of things which, wherever it exists, has produced deplorable results.

32. Several of the witnesses whom we have examined have expressed themselves favourable to a further revision of the rating qualification for common jurors (*a*), more especially as regards the qualification for houses (*b*), which, in some counties, was reduced by the Act of 1876 at the time when the rating qualification for land was raised throughout the whole of Ireland.

(*a*) Huggard, 973. Slacke, 1022. Hamilton, 1146. Barry, 1401, 1402. Bottomley, 1214. Whelan, 1541. Hamill, 1779. Morphy, 2012 Gibson, 2333. Boyd, 2516. Kelly, 3005. 3066. 3075.
(*b*) Whitney, 2561. Byrne, 753. Leahy, 3620. Fitzgerald.

33. The adoption of this suggestion is not unattended with difficulty. It is probable, although upon this point we have not obtained conclusive testimony, that in many districts an increase of the qualification from 40 *l.* to 50 *l.* or 60 *l.* would diminish the number of jurors to an extent which would render the burden of service too onerous on those who would be left.

34. We believe that while a large increase of the qualification would, in such districts, for this reason be out of the question, a small one would not suffice to alter the general character of the juries, or to exclude from them persons whose fitness for service might be open to question (*c*).

(*c*) T. Hamilton, 1124. De Moleyns, 1655. O'Hagan, 2144.

35. It is, we think, necessary to look elsewhere for an improvement of the existing system.

36. We desire, in the first place, to dwell upon the importance of securing on the jury an admixture of classes such as that to be found, we believe, in general in the case of common juries in other parts of the United Kingdom. In Ireland, where there must always be upon the jury a preponderance of the purely agricultural element, and where there is comparatively little crime into which agrarian considerations do not enter, it is more than elsewhere essential to secure a representation of different classes of the community, and as far as possible of those best qualified by their intelligence and education to interpret and administer the law. In the larger cities, and in those districts where industries other than agriculture prevail, a more general representation of different vocations and interests is to be found on the jury list and in the juries. In such districts their conduct has much less frequently given rise to unfavourable comments.

Bottomley, 1201. Blaine, 2759. Blake, 2777. Elrington, 3819. 3822.

Blaine, 2759. Blake, 2777.

37. We have, however, shown that, in most parts of Ireland, property and education are scantily represented on the jury lists; and we have also referred to the causes which conspire to exclude from the jury the few persons who represent them. This imperfection in the existing system is, we think, capable of being diminished.

38. We would, in the first place, suggest that an addition should be made to the number of persons legally qualified to serve as jurors by adding to the existing statutory qualifications special qualifications, which would include a certain number of persons not necessarily themselves rated for the ownership or occupation of land or houses, but from their education, position, or antecedents, manifestly well fitted to act as jurors. The principle of such a special qualification is, it appears to us, already admitted in the Act of 1876, under Section 2

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of which directors or managers of banking, railway, insurance, steamship, shipping or other companies, as well as members of certain public boards, are to be considered as possessing the necessary qualification.

39. We recommend that the qualifications might be extended so as to include other persons whose position in life would afford a guarantee for their education and intelligence, as for instance: —

Half-pay officers of the Army or Navy;

Officers of Militia;

Graduates of English, Scotch, or Irish Universities;

40. Our attention has been called to the exemptions from service on the jury now permitted by the law. These exemptions are, we think, needlessly numerous, and we advise the revision of the schedules in which they are contained. There can, for example, be no reason why all civil engineers, or all persons paid from taxes, general or local, should be exempted. The latter words in particular are, we believe, held to include many persons having no official or other duties sufficient to warrant the privilege accorded to them.

41. We have already referred to the fact that at quarter sessions a number of the higher class jurors are required for service on the grand jury, and become thereby ineligible for service on common juries. The abstraction for this purpose of 23 persons of the class in question, from the already too small minority by which it is represented on the jury list is, in our opinion, to be deprecated, unless absolute necessity can be shown for it.

Lawson, 4119. Hamill, 1771. Kelly, 3037. 3067. 3089.

42. We think it would be possible, without injury to the ends of justice, to dispense with the services now rendered by the grand juries in connection with the criminal business transacted at quarter sessions. Their intervention is believed to be superfluous by many competent witnesses, and their release would render them available for service on the common juries, to which they would bring a valuable accession of strength.

Ferguson, 3355. Neligan, 3416 M'Donnell, 3559. Morris, 3701. Bolton, 3944.

43. With the same object it might, we think, be made the law that in every common jury there should be included at least three persons possessing the higher qualification of special jurors, these three persons being balloted for from a special list. A practice of this kind already prevails in Scotland, where we believe it works satisfactorily. These special jurors should, if challenged, be replaced by jurors taken from the same list.

44. It is however obvious that the improvement of the jury list by these additions will fail in obtaining the desired result, if jurors of the class whom it is particularly desired to attract are still permitted to avoid service.

In order to ensure their presence it will be necessary to introduce some modification in the arrangements under which fines for non-attendance are at present imposed.

45. According to the practice now in force, the sheriff on the first day of the assizes calls over the whole of the names of the jury panel struck for the occasion, and a fine of 40 *s.* is by statute imposed upon every juror who fails to answer his name. This fine is subsequently remitted if the juror is able to show good reason for his non-attendance.

46. A fine of this amount, though sufficient to secure the presence of the humbler jurors, is often insufficient to prevent the absence of wealthier men who, because of other engagements or of the unpopularity and possibly the danger of the service required from them, may be reluctant to serve.

47. It is however at a subsequent stage in the proceedings that the system of fining jurors for non-attendance is, in our judgment, most open to criticism.

The panel having been called over in the manner which we have described, the sheriff for the trial of each case selects by ballot from the names of the jurors present a sufficient number to form a jury.

Purcell, 32. Kelly, 3078. Livingston, 3817.

The name of each juror thus selected is called in court, and here again the person who neglects to answer his name is liable to a fine varying in amount according to the discretion of the judge, and usually increased if it should

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should be necessary from the scantiness of the attendance to call the names a second or a third time. We learn however that on the one hand many of the jurors who are present and have answered their names on the first day of the sessions, do not answer them when they are actually called up for service; and that on the other the prospect of even a moderate fine as a rule suffices to induce an adequate number of the poorer jurors to answer their names. As it is not usual to enforce these fines unless there is a failure to obtain a jury, it follows that A. B. and C., who have evaded the performance of their duty, escape the penalty if D. E. F. and others, who will not run the risk of being fined, submit to the performance of theirs.

Molloy, 676. Barry, 1508. 1519. Neligan, 3422. Bolton, 3941. Justice Lawson, 4039. Justice Fitzgarald, 4183-4.

48. We are of opinion that in the absence of a reasonable excuse these fines should be strictly enforced in spite of the fact that a sufficient number of jurors are in attendance, and that the amount of the fine variable at the discretion of the judge, should be made sufficient to deter jurors of the wealthier class from avoiding service.

Kelly, 3077.

49. We have received a considerable amount of evidence with regard to the operation of the right of challenge which the law allows to the defendant. In cases of felony he may challenge peremptorily 20 names; in cases of misdemeanour he may challenge six. The right to challenge in cases of the latter class was introduced for the first time in 1871. The defendant may, in addition, challenge any number of jurors for a sufficient cause.

Purcell, 37. Blake, 163. Buchanan, 347. Molloy, 630. Hugyard, 858. Barry, 1365. Morphy, 1999. O'Hagan, 2104. Gibson, 2316. 2326. Monahan, 2245. Whitney, 2586. Blake, 2796. Kelly, 3018, 3020. 3046. Dowling, 3137. J. P. Hamilton, 3303-8. Ferguson, 3349. M'Donnell, 3566. Elrington, 3800. Bolton, 3950. Lawson, 4032—4092. Morris, 3694. 3730. Fitzgerald, 4178—4182.

50. We have already referred to the manner in which advantage is taken of this privilege in order to exclude the best jurors. It is described by one witness (Mr. Justice Barry) as "sifting away the intelligence of the jury," and by another (Mr. Serjeant O'Hagan) as "emasculating the panel."

51. A liberal indulgence in respect of the right of challenge was, we are disposed to think, of far more importance to the accused person at the time when the jury was selected by the sheriff, and its composition therefore possibly open to suspicion. With a jury selected as at present by mechanical means, we do not believe that in the interests of justice it is desirable that 20 challenges should be allowed to the defendant, and we see no reason for maintaining the distinction between the number of challenges in case of felony, and that allowed in cases of misdemeanour. We advise that in both cases the number be in future limited to six, which would afford a sufficient protection to the prisoner.

52. The abuse of the right of challenge is particularly noticeable in the case of special juries struck under what is known as the old system (*v.* 34, 35 Vict. c. 65, cl. 39). Trial by a special jury struck under this clause may be demanded by either party in certain criminal cases, and owing to the small number of the special jury panel, and the large right of challenge conceded to the prisoner, the latter has, whenever the jury is thus struck, virtually the power of selecting it himself.

53. We suggest that in the case of trials by special jury the right of challenge, except for sufficient cause, be no longer conceded.

Fitzgerald, 4233.

54. We have received a considerable amount of evidence pointing to the conclusion that in those counties in which the larger cities are situated, the juries should in criminal cases be drawn from the city and county lists combined, with the object of securing on the one hand a more equal distribution of the burden of service, and on the other that mixture of classes and professions to which we attach so much importance.

Molloy, 698. Barry, 1402.

55. We have further received many complaints of the manner in which the jury lists are revised, and the consequent retention upon them year after year of the names of jurors who have become ineligible for service. These complaints are in our opinion well founded.

Bottomley, 1228. Edmondson, 436. Boyd, 2520. Elrington, 3826. Moore, 4005.

56. The practice of requiring the clerks of the union to include in the lists of jurors annually prepared by them, the names of all persons rated above a certain sum, involves some hardship to those who are disqualified by reason of age or other sufficient cause, such persons being obliged year after year to attend the revision sessions in order to obtain the exemption to which they are entitled.

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As a sum of 8 *d.* per name is paid by the counties to the clerks of the unions for every name returned by them, whether the person bearing it is disqualified or not, it follows that a considerable saving would result if these officers were required not to return in their lists any person who had been struck off by order of the judge, or who had at a former revision sessions satisfied the barrister that he had a right to exemption. The clerk of the peace for the county should, we think, with this object, after each revision return to the clerk of every union a corrected copy of his list certified by the revising barrister. The imposition of a slight fine on account of every name improperly included in the list, would secure increased exactitude in its preparation.

57. Some of the witnesses whom we have examined have expressed themselves in favour of the practice, followed in Scotland and in several foreign countries, of accepting the finding of a majority of the jurors in place of requiring their unanimous verdict before the accused person can be convicted or acquitted. Whatever force there may be in the arguments employed in favour of this suggestion if it be considered as a question merely of principle, it is obvious that such a change is to be justified only upon the assumption that the persons composing the jury are, as a rule, desirous of upholding the law, and that the dissent of a small minority, perhaps of a single individual, should not be permitted to counteract the votes of the rest. We fear, however, that in the case of Ireland these considerations can scarcely be held to apply. In that country there is too much reason to anticipate that if the verdict of the majority were to be accepted, unjust acquittals would take place in some cases in which, under the present law, the action of a minority of jurors, more courageous and honest than their colleagues, has led to a disagreement and consequently to a second trial of the accused.

Justice Lawson, 4097. Justice Fitzgerald, 4221.

58. The introduction of some of the above alterations would, we have no doubt, contribute to the gradual improvement of the common juries. The evidence, however, which we have received, forces upon us the conclusion, that in a large part of Ireland no improvement in the composition of the jury, consistent with the principles upon which we conceive trial by jury to be founded, is likely to remove or materially to palliate the unfortunate condition of things which now obtains.

59. In many parts of the country we find, on the one hand, a community almost exclusively agricultural, and, on the other, an organisation extending throughout the whole of that community, affecting persons of every vocation and creed, and endeavouring to set up and enforce in opposition to the law of the land a law of its own. In such a state of society it may fairly be asked whether any confidence can be placed in a system of trial by jury under which, whatever modifications may be introduced into it, the bulk of the common jurors must be drawn from the very class in which this organisation prevails. The force of these considerations appears to us largely increased when it is remembered how large a proportion of Irish crime is directly or indirectly agrarian in character.

Morphy, 2026. Lloyd, 3187. J. P. Hamilton, 3019. Nelligan, 3409. Leahy, 3635. Bolton, 3865, 3877. Justice Lawson, 4053. Justice Fitzgerald, 4234.

60. Under such circumstances we have to deal, in the first place, with the strong probability that in a disaffected district every common jury will include some persons themselves members of that organisation; and in the second, with the certainty that those jurors who might be disposed to abide by their oaths would do so at the risk of serious consequences to themselves, their families, their business, or their property. Some witnesses have gone so far as to express a doubt whether, under such circumstances, it was fair to the jurors that they should be exposed to the alternative of violating their oaths, or incurring the punishment which respect for that oath is likely to bring with it.

J. P. Hamilton, 3328. Justice Lawson, 404.

61. It has been suggested that miscarriages of justice, such as have already too often occurred, might be prevented by removing the cause from the venue in which it would naturally be tried, to one in which there is no likelihood that the jury will be subject to the influences which we have described.

62. This course is at present occasionally resorted to, and, we believe, with great advantage, where from the circumstances of the locality it is manifest that a jury is not likely to act impartially. In such cases it often happens that the trial is postponed to give an opportunity for an application to be made to the

Justice Fitzgerald, 4199.

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the Court of Queen's Bench for leave to remove it to another venue. Such applications must he supported by affidavits showing that in the local venue there is no prospect of obtaining a fair trial.

63. We consider that in the case of all crimes of a political or agrarian complexion it is desirable to offer every facility for the removal of the trials whenever the circumstances of the locality appear to call for such a step, and we think that the mode of proceeding which we have described above, might with advantage be rendered more simple and expeditious. The experience of the winter assizes which are held in one assize town for several counties, and at which consequently many offences are tried away from the local venue, appears, upon the whole, to be encouraging.

De Moleyns, 1638. Hamill, 1790. O'Hagan, 2144. Gibson, 2344. Morris, 3663. Errington, 3795. Bolton, 3883. Justice Lawson, 4060. Justice Fitzgerald, 4199.

64. This remedy is scarcely applicable to offences which are not in themselves of a serious character: there is, however, a very numerous class of offences which derive importance from the fact that they are the manifestation of a deeply seated disorder, and that they form part of a concerted attempt to set at nought the authority of the law, and to disorganise the existing fabric of society.

Justice Fitzgerald, 4207.

65. The tendency to commit such offences could most effectually be checked by the infliction of prompt and certain, but not necessarily very severe, punishment. They are unfortunately too often dealt with tardily, and, owing to the conduct of the juries by which they are tried, committed with impunity.

66. Offences of this kind should, we think, he dealt with by the magistrates in petty sessions, who have under the existing law the power of imposing fines and terms of imprisonment sufficient to meet the requirements of justice.

Hamill, 1801. 1804. O'Hagan, 2151. Morphy, 2117. Kelly, 3051. 3054. 3091. Justice Lawson, 4067.

67. We find that at present these tribunals are relieved of responsibilities which might properly attach to them, on the one hand by the fact that some minor offences are not legally within their jurisdiction, and on the other because the magistrates are often averse to deal themselves with such offences, either from a reluctance to undertake the duty, or from an impression that the penalties which they can impose are not adequate to the magnitude of the offence.

Boyd, 2457. Morphy, 2117.

68. We are of opinion that the powers of the magistrates ought to be sufficiently extensive to enable them to deal with such offences as the following:

- Rioting.
- The commission of aggravated assaults.
- Cases of taking forcible possession where the question of right has been already disposed of by a court of law.
- Assaults on process servers and all agents of the law.
- Posting or sending threatening notices or letters.
- Intimidation, and other offences of a like character.

J. P. Hamilton, 3295. Neligan, 3432. Morris, 3668. Bolton, 3904. Justice Lawson, 4067. Justice Fitzgerald, 4208.

69. We also recommend that the magistrates should be bound to deal with such cases, and should not send them for trial by jury unless by special direction of the public prosecutor; in some cases which have been mentioned to us the magistrates have, with excellent results, exercised their jurisdiction in the manner which we suggest.

Justice Lawson, 4070. Justice Fitzgerald, 4209.

70. In the event of an increased jurisdiction being given to the magistrates in petty sessions we suggest that it should not be exercised without the assistance of the stipendiary magistrate. The appointment of additional stipendiary magistrates would, in this view, be desirable.

Justice Fitzgerald, 4228.

71. The changes which we have recommended would, we believe, ultimately lead to a great improvement in the composition of the juries, and in the administration of the law.

The evidence which we have taken has however forced upon us the conclusion that as long as a large part of Ireland continues under the influence of the present agrarian agitation, the adoption of the steps which we have suggested will probably not prove sufficient to ensure the punishment of crime, and to restore public confidence in the minds of the law-abiding portion of the population.

Neligan, 3425.

72. If it could be shown that the misconduct of juries and the demoralisation of society to which it is due are accidental, or confined to an area so

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small as to be comparatively insignificant, we should prefer to wait patiently for the disappearance of an excitement which might prove to be temporary, and to trust meanwhile to such measures as those which we have recommended.

Nelligan, 3460. Morris, 3685. J. P. Hamilton, 3278.

73. The evidence, however, shows that the area in which trial by jury has broken down is not a small one, and that the social disorder, of which this is one of the numerous manifestations, is so deeply seated that its rapid disappearance cannot be confidently looked for. Nothing will so much retard its disappearance as the prolongation of a state of things under which crime can be committed with impunity, and justice publicly outraged. Mr. Justice Lawson, in referring to the trial of agrarian cases, has stated to us with much force, "That to send cases for trial, and to send the judges round to try them, with "a certainty of a failure of justice, is not only a useless proceeding, but a great "deal worse than useless, because it is the worst public manifestation of the "impunity with which crime may be committed."

Justice Lawson, 4054.

Lloyd, 3107. J. P. Hamilton, 3294. Morris, 3603, 3703. Bolton, 3989. Justice Lawson, 4061. 4110. Justice Fitzgerald, 4211, 4212.

74. Where social demoralisation is so widespread frequent resort to a change in the venue of the trial becomes at once more difficult and less effectual. "I could not," says Mr. Justice Fitzgerald, "fix with confidence on any place in "the south of Ireland where you could transfer for trial cases of the character "alluded to, and feel any degree of certainty that justice would be done." On the other hand the removal of trials from a southern to a northern venue would lead to dissatisfaction scarcely less than that which would be occasioned by a temporary suspension of trial by jury: their removal to Dublin would throw upon the Dublin juries an overwhelming amount of work, to which they might reasonably object.

75. Under these circumstances it will be for Her Majesty's Government to determine whether or not trial by jury should for a limited time, within a limited area, and in regard to crimes of a well-defined character, be replaced by some form of trial less liable to abuse.

76. It has been suggested by some witnesses, that the same results might be arrived at by empowering the judges to refuse verdicts which they believe to have been perversely found, or by having recourse to specially selected juries for the trial of agrarian and political crimes. We believe that if any departure is to be made from the practice of allowing the guilt or innocence of an accused person to be determined by a jury of his fellows, it would be better altogether to suspend trial by jury for a limited time and for particular offences, than, while preserving the outward form of the institution, to supersede it in effect.

77. It is only as a last resort, and in the face of a national emergency, that we could bring ourselves to contemplate so serious an innovation as that which we have conditionally proposed. We shall rejoice if the course of events should relieve the Government from the necessity of having recourse to an expedient so repugnant to our own feelings, and involving so serious a departure from a system which, in ordinary circumstances, is the best protection of liberty.

12th August 1881.

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ORDERS OF REFERENCE.

Die Lunæ, 23° *Maii*, 1881.

IRISH JURY LAWS.

Moved, That a Select Committee be appointed to inquire into the operation of the Irish Jury Laws as regards trial by jury in criminal cases; after short debate, on Question, *agreed to* (The Marquess of Lansdowne).

Die Veneris, 27° *Maii*, 1881.

The Order made on Monday last for the appointment of a Select Committee *discharged*.

Moved, That a Select Committee be appointed to inquire into the operation of the Irish Jury Laws; *agreed to*: The Committee to be named on Monday next (The Marquess of Lansdowne).

Die Lunæ, 30° *Maii*, 1881.

The Lords following were named of the Committee:

Lord President.
Lord Privy Seal.
Duke of Marlborough.
Marquess of Lansdowne.
Earl of Derby.
Viscount Hutchinson.
Lord Tyrone.
Lord Inchiquin.
Lord Silchester.
Lord Monck.
Lord Penzance.
Lord Emly.
Lord Ardilaun.

The Committee to meet To-morrow, at Four o'clock, and to appoint their own Chairman.

Die Jovis, 16° *Junii*, 1881.

The Evidence taken before the Select Committee from time to time to be printed for the use of the Members of this House; but no copies thereof to be delivered except to Members of the Committee until further order.

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LORDS PRESENT, AND MINUTES OF PROCEEDINGS AT EACH SITTING OF THE COMMITTEE.

Die Martis, 31° *Maii*, 1881.

LORDS PRESENT:

Duke of Marlborough.	Lord Tyrone.
Marquess of Lansdowne.	Lord Silchester.
Earl of Derby.	Lord Monck.
Viscount Hutchinson.	Lord Penzance.

Orders of Reference read.

It is proposed that the Marquess of Lansdowne do take the Chair.

The same is agreed to.

The course of Proceeding is considered.

Ordered, That the Committee be adjourned till Tuesday next, at Twelve o'clock.

Die Martis, 14° *Junii*, 1881.

LORDS PRESENT:

Lord President.	Viscount Hutchinson.
Lord Privy Seal.	Lord Inchiquin.
Duke of Marlborough.	Lord Penzance.
Marquess of Lansdowne.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Tuesday last read.

The following Witnesses are examined, viz.: *T. A. Purcell*, Esq., Q.C., *H. A. Blake*, Esq., R.M. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Tuesday next, at Twelve o'clock.

Die Martis, 21° *Junii*, 1881.

LORDS PRESENT:

Lord President.	Lord Tyrone.
Lord Privy Seal.	Lord Inchiquin.
Marquess of Lansdowne.	Lord Emly.
Earl of Derby.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Tuesday last read.

The following Witnesses are examined, viz.: *L. M. Buchanan*, Esq., *T. Edmundson*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Thursday next, at Twelve o'clock.

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Die Jovis, 23° Junii, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Silchester.
Marquess of Lansdowne.	Lord Penzance.
Earl of Derby.	Lord Emly.
Lord Tyrone.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

Proceedings of Tuesday last read.

The following Witnesses are examined, viz.: *Bence Jones*, Esq., *Constantine Molloy*, Esq., *John Byrne*, Esq., *T. Newenham Harvey*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till To-morrow, at Twelve o'clock.

Die Veneris, 24° Junii, 1881.

LORDS PRESENT:

Lord President.	Lord Tyrone.
Lord Privy Seal.	Lord Inchiquin.
Duke of Marlborough.	Lord Silchester.
Marquess of Lansdowne.	Lord Emly.
Earl of Derby.	Lord Ardilaun.
Viscount Hutchinson.	

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of yesterday read.

The following Witnesses are examined, viz.: *S. Huggard*, Esq., Captain *O. R. Slacke*, R.M., *W. M. Reade*, Esq., R.M., *T. Hamilton*, Esq., R.M. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Tuesday next, at Twelve o'clock.

Die Martis, 28° Junii, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Monck.
Marquess of Lansdowne.	Lord Penzance.
Earl of Derby.	Lord Emly.
Viscount Hutchinson.	Lord Ardilaun.
Lord Tyrone.	

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Friday last read.

The following Witnesses are examined, viz.: *H. H. Bottomley*, Esq., Mr. Justice *Barry*, *W. E. Whelan*, Esq., R.M. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Thursday next, at Twelve o'clock.

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Die Jovis, 30° *Junii*, 1881.

LORDS PRESENT:

Lord Privy Seal.	Lord Monck,
Marquess of Lansdowne.	Lord Penzance,
Lord Inchiquin.	Lord Emly.
Lord Silchester.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Tuesday last read.

The following Witnesses are examined, viz.; *T. De Moleyns*, Esq., Q.C., Mr. Justice *Barry*, *Arthur J. Hamill*, Esq., Q.C., *Adam Mitchell*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till To-morrow, at Twelve o'clock.

Die Veneris, 1° *Julii*, 1881.

LORDS PRESENT:

Lord President	Lord Inchiquin.
Lord Privy Seal.	Lord Penzance.
Marquess of Lansdowne.	Lord Emly.
Earl of Derby.	Lord Ardilaun.
Lord Tyrone.	

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of yesterday read.

The following Witnesses are examined, viz.: *W. A. Morphy*, Esq., Mr. Serjeant *John O'Hagan*, *R. V. O'Brien*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Tuesday next, at Twelve o'clock.

Die Martis, 5° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Marquess of Lansdowne.	Lord Silchester.
Earl of Derby.	Lord Monck.
Viscount Hutchinson.	Lord Emly.
Lord Tyrone.	

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Friday last read.

The following Witnesses are examined, viz.: *W. H. J. Monahan*, Esq., *J. G. Gibson*, Esq., Q.C., *T. Boyd*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Friday next, at Twelve o'clock.

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Die Veneris, 8° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Tyrone.
Lord Privy Seal.	Lord Silchester.
Marquess of Lansdowne.	Lord Monck.
Earl of Derby.	Lord Penzance.
Viscount Hutchinson.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Tuesday last read.

The following Witnesses are examined, viz.: *Benjamin Whitney*, Esq., *F. W. M'Blaine*, Esq., *J. C. Blake*, Esq., *T. Fitzgerald*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Tuesday next, at Twelve o'clock.

Die Martis, 12° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Silchester.
Lord Privy Seal.	Lord Monck.
Marquess of Lansdowne.	Lord Ardilaun.
Lord Inchiquin.	

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Friday last read.

The following Witnesses are examined, viz.: *Charles Kelly*, Esq., Q.C., *W. D'Arcy Dowling*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Tuesday next, at Twelve o'clock.

Die Martis, 19° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Viscount Hutchinson.
Lord Privy Seal.	Lord Tyrone.
Duke of Marlborough.	Lord Inchiquin.
Marquess of Lansdowne.	Lord Emly.
Earl of Derby.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Tuesday last read.

The following Witnesses are examined, viz.: *Clifford Lloyd*, Esq., R.M., *J. P. Hamilton*, Esq., Q.C., *R. Ferguson*, Esq., Q.C., *J. C. Neligan*, Esq., Q.C., *E. Corcoran*, Esq., *J. C. McDonnell*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Thursday next, at Twelve o'clock.

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Die Jovis, 21° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Silchester.
Marquess of Lansdowne.	Lord Penzance.
Earl of Derby.	Lord Emly.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Tuesday last read.

The following Witnesses are examined, viz.: *Maurice Leahy*, Esq., *W. O'Connor Morris*, Esq., Q.C., *J. F. Elrington*, Esq., Q.C., *G. Bolton*, Esq., *Cecil Moore*, Esq. (*vide* the Evidence).

Ordered, That the Committee be adjourned till Wednesday, the 3rd August next, at Twelve o'clock.

Die Mercurii, 3° *Augusti*, 1881.

LORDS PRESENT:

Lord President.	Lord Monck.
Marquess of Lansdowne.	Lord Emly.
Lord Tyrone.	Lord Ardilaun.
Lord Inchiquin.	

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Thursday, the 21st of July, read.

The following Witnesses are examined, viz.: Mr. Justice *Lawson*, Mr. Justice *Fitzgerald* (*vide* the Evidence).

Ordered, That the Committee be adjourned till Monday next, at Twelve o'clock.

Die Lunæ, 8° *Augusti*, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Silchester.
Marquess of Lansdowne.	Lord Monck.
Earl of Derby.	Lord Penzance.
Viscount Hutchinson.	Lord Emly.
Lord Tyrone.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of Wednesday last read.

A Draft Report is laid before the Committee by the Chairman.

The same is considered, and Amendments are made therein.

Ordered, That the Committee be adjourned till To-morrow, at One o'clock.

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Die Martis, 9° Augusti, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Silchester.
Marquess of Lansdowne.	Lord Monck.
Earl of Derby.	Lord Penzance.
Viscount Hutchinson.	Lord Emly.
Lord Tyrone.	Lord Ardilaun

The MARQUESS OF LANSDOWNE in the Chair.

Order of adjournment read.

The Proceedings of yesterday read.

The Draft Report is again considered, and further Amendments are made therein.

The remaining paragraphs are read, and are as follows: "The changes which we have recommended would, we believe, ultimately lead to a great improvement in the composition of the juries, and in the administration of the law.

"The evidence which we have taken has, however, forced upon us the conclusion that unless the condition of Ireland undergoes something little short of a transformation, no mere alteration of the conditions under which trial by jury takes place will be effectual to insure the punishment of crime, and to restore public confidence in the minds of the law-abiding portion of the population. Neligan, 3425. Lawson.

"If it could be shown that the misconduct of the juries and the demoralisation of society to which it is due are accidental, or confined to an area so small as to be comparatively insignificant, we should prefer to wait patiently for the disappearance of an excitement which might prove to be ephemeral, and to trust meanwhile to such palliative measures as those which we have recommended.

"The evidence, however, shows that the area in which trial by jury has broken down is not a small one, and that the social disorder, of which this is one of the numerous manifestations, is so deeply seated that its rapid disappearance cannot be confidently looked for. Nothing will so much retard its disappearance as the prolongation of a state of things under which crime can be committed with impunity, and justice publicly outraged. Mr. Justice Lawson in referring to the trial of agrarian cases has stated to us with much force, 'That to send cases for trial and to send the judges round to try them with a certainty of a failure of justice is not only a useless proceeding, but a great deal worse than useless, because it is the worst public manifestation of the impunity with which crime may be committed.' Neligan, 3460. Morris, 3685. Lawson

"Where social demoralisation is so widespread, frequent resort to a change in the venue of the trial becomes at once more difficult and less effectual. 'I could not (says Mr. Justice Fitzgerald) fix with confidence on any place in the south of Ireland where you could transfer for trial cases of the character alluded to, and feel any degree of certainty that justice would be done.' When a whole group of counties is affected, a change of the venue, if it is to avoid a failure of justice, will involve the removal of the trial to a distance from the locality at great cost to the public, and inconvenience to the parties and their witnesses. The removal of trials from a southern to a northern venue would lead to dissatisfaction scarcely less than that which would be occasioned by a temporary suspension of trial by jury. Their removal to Dublin would throw upon the Dublin juries an overwhelming amount of work, while there is some reason for doubting whether it would in all cases be successful in leading to a thoroughly impartial trial. Lloyd, 3197. J. P. Hamilton, 3294. Morris, 3663, 3709. Bolton, 3989. Lawson Fitzgerald

"Under these circumstances it will be for Her Majesty's Government to determine whether or not trial by jury should for a limited time, within a limited area, and in regard to crimes of a well-defined character, be replaced by some form of trial less liable to abuse.

"It has been suggested by some witnesses, that the same results might be arrived at by empowering the judges to refuse verdicts which they believe to have been perversely found, or by having recourse to specially selected juries for the trial of agrarian and political crimes. We believe that, if any departure is to be made from the practice of allowing the guilt or innocence of an accused person to be determined by a jury of his fellows, it would be better altogether to suspend trial by jury for a limited time, and for particular

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particular offences, than while preserving the outward form of the institution to supersede it in effect.

"It is only as a last resort, and in the face of a national emergency, that we could bring ourselves to contemplate so serious an innovation as that which we have conditionally proposed. We shall rejoice if the course of events should relieve the Government from the necessity of having recourse to an expedient so repugnant to our own feelings, and involving so serious a departure from a system which, in ordinary circumstances, is the best protection of liberty."—

It is then moved by the Lord Privy Seal to leave out all the words after "law" in the third line to the end of the Draft Report, for the purpose of inserting the following words:

"But we feel bound to add that the evidence which we have taken has forced upon us the conclusion that such reforms will be of little use so long as the present agrarian agitation and organisation remain dominant within a large portion of Ireland; should this state of things unhappily continue, the responsibility will rest with the Government to provide the necessary means for the due maintenance of the law, and the punishment of offenders."

Objected to:

On Question, That the paragraphs proposed to be left out stand part of the Report:

Contents.	Not Contents.
Marquess of Lansdowne.	Lord President.
Earl of Derby.	Lord Privy Seal.
Viscount Hutchinson.	Lord Monck.
Lord Tyrone.	Lord Emly.
Lord Silchester.	
Lord Penzance.	
Lord Ardilaun.	

The remaining paragraphs are again read, and *agreed to*, with Amendments.

The Report is read by the Clerk, and *agreed to*.

Ordered, That the Lord in the Chair do make the said Report to the House.

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MINUTES OF EVIDENCE.

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Die Martis, 14° *Junii*, 1881.

LORDS PRESENT:

Lord President.	Viscount Hutchinson.
Lord Privy Seal.	Lord Inchiquin.
Duke of Marlborough.	Lord Penzance.
Lord Ardilaun.	

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. THEOBALD PURCELL, is called in; and Examined, as follows:

1. *Chairman.*] I believe you are Chairman of the County and City of Limerick?
I am.

2. And you had had opportunities, before your appointment to that post, of watching the operation of the jury laws in Ireland?
I have been for about seven years Chairman of the County of Limerick; and before that I had had a good deal of experience as Crown Prosecutor, and previously to that as counsel for prisoners.

3. Your experience therefore extends to the period before the passing of the Act of 1871?
It extends very far back, before 1871.

4. I need not ask you whether you are aware that in 1876 there were two Acts of Parliament passed for the purpose of amending the jury laws?
Yes, for the purpose of amending the Act of 1871.

5. I should, I think, be warranted in saying that amongst the objects of the legislation of 1876 was the improvement of the class of jurors habitually serving, and also the exclusion of persons who were not qualified to serve?
It was an amending Act to the Act of 1871, endeavouring to cure some of the consequences of that Act.

6. Will you be good enough to state to the Committee whether in your opinion the Acts of 1876 were successful in effecting those objects?
About two years ago a very eminent judge of the Court of Queen's Bench, Mr. Justice Barry, described trial by jury, at least in the county of Limerick, to be a farce; and though perhaps that was expressed in rather strong terms, according to my experience, the description was literally true.

7. Will you state to the Committee how it has come to pass that trial by jury in that particular part of Ireland could merit such a description?
I do not confine that description altogether to the county of Limerick, I am sorry to say; but in certain classes of cases, in all cases arising out of politics or agrarian offences or assaults upon the police, in fact almost in every case of violence, it is almost impossible to procure a conviction. The feeling of the jury appears to be one of antagonism to the law, and of sympathy with the criminal. The jury seem to think it their duty to consider the evidence, with

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the object, not of doing what is just between the parties, but of taking care of the poor fellow in the dock.

8. Does that description apply particularly to the present condition of things, or is it one which you would say was applicable under ordinary circumstances?

That is my experience since the Act of 1871. Of course it has been considerably intensified by the recent agitation in Ireland, but I should not at all say that it arose subsequently to the agitation; I am sorry to say that previously to that there was the same difficulty in criminal cases in procuring a jury to discharge its duty honestly and conscientiously. I am very sorry to have to say it, but I am bound to state here the result of my experience.

9. And that description would be limited to cases where the offence was one connected with land, or with some matter around which a good deal of public feeling and excitement gathered?

I should not altogether limit it to that; I said that it would apply in almost all cases of violence, grievous assaults, aggravated assaults upon individuals. Unfortunately in Limerick, which I believe is almost one of the last counties in which it lingers, a good deal of the old faction feud continues, particularly in one district, New Pallas; and I am aware that when parties are returned for trial to the quarter sessions, a copy of the panel is procured from the sheriff, and the friends of the accused regularly canvass the jurors, and either through favour, or intimidation, they render the trial absolutely nugatory.

10. You pointed to the Act of 1871 as the period from which a change in the character of the juries took place; since the Act of 1871 the qualification of the jurors has been, as you are aware, considerably raised?

I am aware of that, but still the nature of the qualification remains the same, viz, a rating qualification. Prior to the Act of 1871 my recollection is that the jurors in counties consisted of 10 *l.* freeholders, and 15 *l.* leaseholders, exclusively; in cities, every resident, merchant, freeman, and householder who occupied a house of the value of 20 *l.* a year, or who was possessed of personal property to the amount of 100 *l.*, was on the jury list. In the Act of 1871 the 10 *l.* freeholders were continued, the leasehold was increased to 20 *l.*, and a certain rating qualification was conferred, varying in the different counties in Ireland. In Limerick the county qualification is 40 *l.* rating, and in the city it is 20 *l.* rating.

11. Is that for petty juries?

For petty juries. I should say that from the observations which I have made, I should exclude the jurors of the City of Limerick, than whom probably there are no more intelligent or, generally speaking, conscientious jurors in the kingdom. That applied generally before, but I am afraid that in the present state of Ireland the city jurors would scarcely be in a position to discharge their duties with freedom; they would, in my opinion, be more or less subject to intimidation.

12. Then, in your opinion, the change in the rating qualification, which was introduced in 1876, was not effectual in altering the class of jurors?

In my opinion it was not effectual. I think that a juror rated at 40 *l.* a year is just as intelligent and not a bit less so than a juror who would be rated at 130 *l.* or 140 *l.* a year; they are pretty much the same class. The distinction between the two qualifications was this: that prior to 1871 it was required that a juror should be an owner; he was a freeholder, which of course meant that he was the absolute owner; or he was a leaseholder, which implied that he had a considerable interest in his holding; and it was confined to those two classes. But the real cause of the difference arose from the unrestricted power vested in the sheriff of selecting from the general body of the jurors the jury panel for the quarter sessions and also for the assizes.

13. Before we leave the question of qualification, your point, as I understand it, was, that as long as the qualification is merely a rating qualification, it does not signify very much whether it is 20 *l.*, or 40 *l.*, or 50 *l.*?

Or 100 *l.*

14. I presume

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14. I presume it would be the case that in some parts of Ireland, if the rating qualification, particularly in counties, were to be much raised, you would not get any jurors at all, or you would have great difficulty in getting jurors?
I think you would find a difficulty in getting jurors.

15. Then, leaving the question of qualification, will you state to the Committee whether, under the present law, there are any facilities for excluding from the jury panel persons who might notoriously be unfit to try cases?
There is no such power except the power that the Crown possesses in all cases of felonies of directing a juror to stand by; but that is in a great degree neutralised by the power of the prisoner in all cases to challenge 20 jurors peremptorily. The Crown have frequently exercised the power, but apparently without success; in point of fact the feeling that I have spoken of pervades the great mass of jurors.

16. *Lord Privy Seal.*] Is there any limit to the power of the Crown to order a juror to stand by?
In the first instance there is no limit, but as soon as both the order to stand by, and the challenge on the part of the prisoner has exhausted the jury panel, the Crown are then obliged to go over the panel again, and they must select their jury from the men that they have ordered to stand by.

17. *Chairman.*] In the first instance, I think, the Crown has an unlimited power of challenge?
In the first instance the Crown has an unlimited power of challenge.

18. And the prisoner's solicitor is allowed 20 challenges?
The prisoner's solicitor is allowed 20 challenges peremptorily.

19. In each case without showing any cause?
Without showing cause; and after that as many as they can show cause for challenging. The effect of that very often is very nearly to exhaust the jury panel; then the trial could not go on, of course, for the want of jurors, and in that case the Crown is obliged to fall back upon those whom they have ordered to stand by, and to select a jury from them.

20. *Lord Privy Seal.*] Does that sometimes happen, in fact?
Very frequently.

21. Duke of *Marlborough.*] But those whom the prisoner challenges, I suppose, are never selected again?
Never; that is an absolute challenge. The power of the Crown is, to the extent which I have mentioned, only conditional; that is to say, the jurors are told to stand by for the present, and if a jury can be got without calling upon those who have been ordered to stand by, the Crown then does not go back upon those jurors.

22. *Chairman.*] With regard to the revision of the jury lists, does that afford any opportunity for purging the lists of persons who are not qualified to serve as jurors?
No opportunity whatever. The only power that the revising barrister has, is simply to see that the proper qualification is possessed; he has no power to enter into any consideration affecting either the character or the tendencies of jurors.

23. Lord *Inchiquin.*] But the sheriff used formerly to exercise that discretion?
The sheriff had formerly an unlimited discretion, confined, of course, to the list of jurors. For instance, in Limerick I think there are about 1,900 jurors on the list; in making out the panel for the assizes or quarter sessions, the sheriff was at liberty to go to the jurors' book, and select out of the jurors' book whomsoever he thought best qualified to serve, and there was no restriction whatever upon that discretion.

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24. *Chairman.*] With regard to the exercise of the power of selection by the sheriff under the former system, that power was very much complained of, was it not?

It was very much complained of. I do not think that the complaints were often well founded; but there is no doubt that in any important political case very great dissatisfaction was generally expressed at the power conferred upon the sheriff, who may have held particular views, to select for the trial those jurors who, in his discretion, he thought best qualified to discharge the duty; and I do not think it would be at all possible to return to that state of things in Ireland.

25. Even if the number of cases in which the abuse took place was very small, the fact of there being a suspicion of the kind would shake public confidence?

Clearly.

26. The Qualification Act of 1876 contains a clause conferring what, I think, is spoken of as a special qualification, upon members of boards, commissioners, and other people of a quasi-official position?

Yes.

27. Has that clause been effectual in securing the presence in the jury box of the class of persons whom it was apparently hoped to attract by means of it?

I do not think it has.

28. As a matter of fact, do persons of education, and of perhaps rather better position than the ordinary run of those persons who are on the jury list, habitually serve on juries in the district with which you are familiar?

My experience is that they do not. I find that they prefer paying the fine to being obliged to serve on juries, and I can very well understand the reason. One or two individuals in the jury would be perfectly powerless.

29. The first fine, I think, is a small one?

It is 40 *s.* It is the duty of the clerk of the peace at quarter sessions, and of the clerk of the Crown at the assizes, to call over the panel in the first instance, and upon those who do not answer to their names the Act imposes a fine of 40 *s.*; but that is not the limit of the fine which the court has the power of imposing; that is the first fine for non-attendance; that is the statutory fine.

30. Is that fine always exacted?

Unless sufficient reason is subsequently given for the non-attendance, some reasonable excuse, which the judge generally takes into consideration at the subsequent assizes, or the chairman at the subsequent sessions (if it has been imposed at quarter sessions), the fine is levied.

31. But a 40 *s.* fine would not, I suppose, be effectual in coercing a person of the class of whom you were speaking just now, into attendance, if he had made up his mind that he wished to shirk the duty?

I am afraid that double or treble the fine, in many cases, would not induce some of those men to attend.

32. Then the names are called over a second time on a higher fine, are they not, supposing that the sheriff is not able to form a jury?

If not, then the panel is called over a second time, and the judge imposes whatever fine he considers the circumstances call for.

33. But the chances would be that the imposition of the smaller fine in the first instance would secure the answering to their names of a sufficient number of jurors?

The imposition of the fine of 40 *s.* is sure to secure the jurors who are rated, who are generally of a bumbler class, and to whom a fine of 40 *s.* is a matter of very considerable importance. There is seldom an insufficient attendance of jurors; it is very rarely that the number of jurors that are necessary to form a jury are not in attendance.

34. A certain

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34. A certain number of the higher class jurors, are, of course, required for the grand jury and for special juries?
Yes; for the grand jury the attendance is generally quite sufficient.

35. But the fact of these jurors serving only on the grand jury deprives the petty juries of their presence?
Yes, certainly. They cannot adjudicate upon whether a bill shall be found or not and afterwards try it as petty jurors, because already they have formed an opinion upon the question; no doubt an opinion formed upon one-sided evidence, but still it is an opinion.

36. Therefore, to begin with, the better class jurors are weeded, so to speak, by the necessity of some of them serving on the grand jury and on the special juries, and also by the fact that many of them, for reasons which you have given, habitually endeavour to shirk service on the common juries?
Quite so.

37. Will you tell the Committee whether the privilege of challenging 20 jurors without cause, which is now allowed to the prisoner's attorney, does not also tend to keep out of the jury box the better class of man?
Of course. If I were defending a prisoner I would look out for the men who would be likely to do their duty, and challenge them.

38. I am afraid, from what you have told us, we may take it that the district with which you are particularly familiar has not been, in all respects, in a very quiet state during the last few months?
That is a matter of universal notoriety, I am sorry to say.

39. And the prevailing excitement would of course extend to those persons who are liable to serve in the jury box?
I think it would be a cruelty to put into the box now an honest juror, a man who was determined to do his duty, for he would only do it at a very great risk, a risk so great that few men would have the courage to undergo it.

40. Is there not a clause in the Juries Procedure Act of 1876, which directs the sheriff, in the formation of the panel, to have regard to the convenience of the jurors in this way: that he is to give a preference to those who do not reside at a great distance from the court?
I do not remember that. The duty of the sheriff in making out the panel under the new Act of 1871 (and I do not think it is altered in the Juries Procedure Act) is to go alphabetically through the jury list and take one name out of each letter and then repeat the process.

41. Have you, yourself, been aware of cases where jurors have been threatened in the event of their doing their duty?
I have never had brought before me judicially any evidence of the fact, but it is a matter almost of notoriety, as I have stated, that the jurors are regularly canvassed, and either induced to take a particular view of the assumed guilt of the accused, or they are threatened if they do not.

42. Does the evidence which you have given relate equally to the special juries?
I have not had so much opportunity of forming an opinion upon that question. Special juries are not empanelled to try criminal cases, and the evidence which I have given refers to criminal cases, that is to say, to all classes of criminal cases that involve offences of violence; because the juries do their duty remarkably well in all cases of offences against property. In cases of larceny, cattle lifting, or anything of that kind, I find the juries extremely intelligent, and thoroughly capable of appreciating the evidence, and finding a proper verdict; but I find an obtuseness as to the appreciation of evidence in all those cases of violence that I have spoken of.

43. Has it occurred to you that any remedy is possible for a state of things so unfortunate as that which you have described?

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I have, of course, considered the matter, and more particularly with reference to this examination. The only remedy that at all suggests itself to me would be one that I am afraid would be very unpopular, but I have come to the conclusion that no alteration of the jury laws at present would meet the objections and difficulties which arise with reference to the trial of criminal cases. In point of fact, in my opinion, the only mode in which, what I may describe as the paralysis of criminal justice that has existed in the country for a considerable time could be remedied, would be by trying the prisoners not before a jury, but before some other tribunal. It appears to me that the only way in which the difficulty could be overcome at quarter sessions would be by trying the cases before the chairman and two resident magistrates. I say resident magistrates, because trying them before the local magistrates would expose these magistrates to a great deal of unpopularity and odium; and, besides that, the fact that they are, generally speaking, landlords in the county, would lead to an imputation upon them that they were influenced more or less against the prisoner, who would probably be either in the position of a tenant, or connected with tenants in the county; and I should say that in all this particular class of cases at the assizes, the trial should take place before two judges.

44 Supposing that it were not considered advisable to go to such a length as that, do you think that it might be desirable to give facilities which do not now exist for changing the venue of the trial?

Certainly; but I am afraid that the feeling prevails so generally that you would find that the change of venue would accomplish very little, certainly in the present state of Ireland.

45. But where there happened to be a violent local excitement if the case could be tried in some part of the country where that excitement did not prevail, that would be a gain so far, would it not?

If the excitement were merely local.

46. Would it not rather follow from the evidence which you have given upon the question of the right of challenge now allowed to the prisoner, that if that right of challenge were limited you might get a better class of juror than you do now?

It is extremely difficult to limit the right of challenge, because I am afraid, in the first place, that any limitation of the right of challenge would be very unfavourably received. That right of challenge has existed from almost time immemorial; it exists in England and it exists in Ireland; and, above all, the difficulty would be what limitation you should impose upon it.

47. The right of challenge would be much more essential under a system such as the old one where the sheriff was in a position to pack the jury, if he felt inclined to do so, than it would be now, would it not?

I do not think that the limitation of the right of challenge would effect much improvement.

48. Do you think that such a change as you have suggested would be a very unpopular one in Ireland?

I am sure it would.

49. You think that there is a deep attachment to trial by jury, and that any alteration of the law would shock public feeling considerably?

I am quite sure that the juries are thoroughly conscious of the power that the present system gives to them, and that they would be very unwilling to relinquish it.

50. *Lord Privy Seal.*] Do you mean to limit the fundamental and vital change that you have just suggested; that is to say, the abolition of the jury in criminal cases, to the present condition of things in Ireland, or not?

In the first place I would limit it only to certain classes of offences. I wish not to be misunderstood; I would limit it to offences, as I stated, arising out of political or religious differences, or agrarian offences, or assaults upon the police, and cases of aggravated violence; and I should hope that it would not necessarily

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sarily be perpetual, but that, after some time, if, as we all hope, the country should settle down, and the feeling which at present prevails throughout the country should cease, it might be possible to return to the jury system.

51. Then your suggestion is intended to be of a temporary kind, in the same way as any other form of coercion is made temporary and limited by statute?
The only way in which I can explain that is this: Whenever the cause which influences me in making that suggestion has ceased, I should, of course, be of opinion that there ought to be a return to what has always been the system of trial. When that period may arrive is a matter upon which it is impossible for me to express any opinion; I should hope that it may be soon.

52. But you have told us that the present jury law had worked badly even before this period of disturbance had begun?
My experience in the county Limerick, since I have been chairman, has been much the same, and I became chairman the very year after the present jury law came into operation. It first came into operation in Limerick in the year 1873, and I became chairman in 1874. The observation which I have referred to of Mr. Justice Barry was made by him prior to the present agitation; it is nearly two years ago since he expressed that opinion from the bench in Limerick.

53. I presume that, in the year 1874, there was nothing very abnormal in the condition of Ireland?
No.

54. Even that part of the country with which you are more particularly familiar was not, what is commonly called, disturbed or excited?
Certainly not. The general agitation only affected Limerick very recently. When I went down to my sessions in October 1880 there was scarcely any, indeed I may say there was no agrarian disturbance in Limerick. There certainly had been no outrages, I mean no peculiar outrages. Unfortunately there is a district in Limerick where the old faction feud still continues to exist, the district of New Pallas; and, ever since I became chairman, I have had very often cases arising out of these faction feuds; but the general agrarian agitation had really not reached Limerick in October 1880, and there was very little disturbance. I should say that my experience is that there has always been an extremely good feeling between landlord and tenant in Limerick; I have had comparatively few cases under the Land Act of 1870; and I know that there are very large portions of the county which are let at a wonderfully low rate; all Lord Devon's estates, for instance, and other portions of Limerick, are let at an extremely low rate; and there was not any general disturbance in October of 1880. It was not until the month of November that Limerick became seriously disturbed.

55. But we will suppose that the country is restored to the condition in which it was, say in the year 1874; what suggestion under those circumstances would you make as to the jury laws?
I confess that the jury system worked very unsatisfactorily in 1874, and from the time that I became chairman in Limerick, in all those particular classes of cases, in all cases of violence. In the plainest cases, the jurors in very many instances found verdicts which were, in my judgment, entirely at variance with the evidence.

56. But if the country were to be restored to the condition in which it was in the year 1874, I suppose we should all be very thankful, should we not?
I should think so.

57. Do you mean then that even, under those circumstances, you think this *ultima ratio* of the abolition of trial by jury for certain offences would be the only remedy?
I would perhaps suggest a qualification to the suggestion which I made, and it would be this, that there should be a power vested in the Attorney General to direct, in classes of cases I have mentioned, that they should be tried in the manner which I have described. That, of course, would impose upon the Attorney General the

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the responsibility of considering the state of the country at the time, the nature of the offence, and the possibility of having a just trial by a jury; and only upon being satisfied in his judgment that that would be impossible, would he direct, by his fiat, that the case should be tried in the manner which I have suggested. I think that would probably get rid of a good deal of the objection which might attach to any general rule that all these cases should be tried in the manner which I have described. There would always be a responsible officer of the Crown whose duty it would be to investigate each case as he does at present, because, as you are aware, no prosecution is instituted unless by direction of the Attorney General; all the evidence, informations, and everything relating to it are sent up and submitted to him, and he directs, either that the case shall be prosecuted, or that it shall not; and, if the further duty were cast upon him to say that, having considered the matter carefully, and having investigated the evidence before him, having regard also to the state of the country, the case was one that ought to be tried in the manner that I have suggested; I do not think any injustice could possibly follow from adopting the rule.

58. *Lord President.*] Your experience is only since the Act, which was commonly called Lord O'Hagan's Act, came into force?

That is my experience as chairman.

59. But you had, I suppose, as Crown prosecutor, experience of the old system?

I have had experience as Crown prosecutor, and also as defending prisoners.

60. Do you think that in the present state of the country the old system would act well in Ireland?

I do not think we could ever revert to the old system of selection by the sheriff; I am sure it would be most unfavourably received, and that such a suggestion as I have made would be preferred.

61. But what I meant was, that so far as regards the terrorism which exists, and which I imagine is the cause of the juries not acting, the same terrorism would act upon juries summoned upon the old system as upon the present ones?

Certainly.

62. You drew some distinction between the town and the country; will you explain that rather more fully?

Before the present agitation, any cases arising out of, no matter what cause, were always admirably tried by the city jurors; their verdicts were, speaking generally, very just and very intelligent.

63. Whether cases of violence or not?

Even in cases of violence; but I should say that now the city jurors would be in the present state of the country just as liable to intimidation as the county jurors. They are very much connected, in business matters with the farmers throughout the county; and, besides that, unfortunately, the terrorism in Limerick is not confined to the county, but has extended to the city as well.

64. But in the county in former days, before this present agitation got to the height that it is now at, and has been for the last year or two, besides ordinary agrarian cases, there were cases of violence where juries broke down as well?

Certainly, in the county.

65. Outside the New Pallas and Emly districts where the faction feuds exist?

Yes, they broke down in the way that I have endeavoured to explain. In all these factions there is, more or less, a kind of organisation amongst them. Of course my evidence has special reference to quarter sessions, and immediately before the quarter sessions were held I know, as a matter of fact, at least I have derived the information from the sheriff and from the officials, that

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that the friends of the accused were in the habit of procuring a copy of the panel, and it was a matter of notoriety that the friends of the accused went round and canvassed the men upon the panel who were to try the case, and used inducements, either of persuasion, or of terror, to influence them. I can account only by some such cause for the very many verdicts of acquittal that have been brought in by those juries.

66. Can you give any actual figures as to the number of cases where juries have disagreed or acquitted prisoners in cases of particular classes of crime?

I could not; indeed I doubt very much whether, except by going through my note books during the period, I could ascertain that.

67. If you have a series of cases where juries have broken down, the actual figures sometimes carry a great deal of weight?

I should say that, in a very large majority of cases, they broke down.

68. At the present moment there may, I suppose, be another reason also for their breaking down, and that is the want of evidence?

Certainly, at present, and even before, in those cases witnesses were often, more or less, intimidated. For instance, the variance between the testimony that they gave as appearing by the informations and the evidence that they gave when they were before me, was most marked.

69. Then that reason would apply to a trial before a chairman and two resident magistrates, or at the assizes before two judges, just as much as to a trial before a jury?

Of course it would at present. My observations are confined altogether to the mode of trial, and not to questions about evidence; that is a matter upon which I can offer no suggestion.

70. But at the present moment there would be great deficiency in the evidence to try a case properly?

I do not think you would get evidence now.

71. With respect to the change of venue, you think that that would be desirable in certain cases where there is local excitement?

Certainly.

72. Is there not a danger of the excitement being made almost greater when a change of venue takes place in Ireland, and of pressure being brought to bear on the jurors in the place to which the venue has been changed?

Having regard to the extent of the organisation at present existing, I should certainly answer that question in the affirmative.

73. The very fact of changing the venue causes particular attention to be directed to the case, and it is not tried as easily as it would be if it were taken in the ordinary course of business in the locality; is not that so?

I do not know that it would make much difference as to the result. When I answered the Chairman's question with reference to the change of venue, I understood it rather to refer generally, and not to the particular condition of the country at present. I think there ought to be a greater power of changing the venue at all times. In a generally quiet state of the country there might be some local excitement, and it would be, of course, a great advantage to have the power of sending the case to be tried in some locality where that excitement did not exist.

74. Will you state the manner in which the venue is now changed?

On application to the Court of Queen's Bench by the Attorney General, and then it must be tried in the Court of Queen's Bench.

75. How would you propose to change it?

I would give the Attorney General the power, and throw upon him the responsibility.

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76. But you do not think that a mere change of that sort would meet the present difficulty altogether?
I do not think it would now.

77. With regard to the right of challenge, supposing that the peremptory right of challenge were done away with, there would remain the challenge for reasons given?
Yes, there could be no possible objection to the existence of that right, because I think it is only a matter of justice that, on showing that any particular individual was not likely to do what was right and just between the Crown and the prisoner, he should not be allowed to go into the box.

78. Would that, in your opinion, be a sufficient defence for the prisoner against prejudiced people if he had the other challenge taken away from him?
I am afraid that the right of challenge would not be very often exercised in that case, because, speaking of my old experience in defending prisoners, I do not know that we were always very well able to allege cause for challenging the jurors. If we had been obliged to allege cause for challenging the jurors I do not know that we could have alleged sufficient cause.

79. And, if the right of challenge is left, it is almost necessary that you should have a certain peremptory right to challenge?
It is a very ancient right, and I really have not considered the question; but as well as I can form an opinion upon it hastily, I think that limiting the right of challenge on the part of the prisoner to cases where he could show cause, would not be an injustice to him. I think it is very reasonable, but it would depend upon what the court would consider to be a cause. It is very difficult to establish a cause for challenge. It may be tolerably well known that a particular juror has a general prejudice upon a question that is involved in the trial of a prisoner. Supposing, for instance, that an agrarian offence has been committed, and that a man is indicted, and supposing that there is on the jury somebody who is known to be more or less connected with the landlords in the county, and who, as is very often the case with the underlings of landlords, holds much stronger landlord opinions than the landlord himself, it would be very difficult to assign as a reason that the prisoner does not expect that that man will act fairly between him and the Crown.

80. And yet in some cases there may be a danger of his not acting fairly?
There might be, I have no doubt.

81. *Chairman.*] Would not an objection of that class be received as a sufficient objection?
How could it be proved.

82. If the man was, I think you used the word, an underling of a landlord?
Perhaps the word "underling" is too strong a term; but I mean a man who is known to be a great friend of landlords, and perhaps connected more or less with them; supposing, for instance, he is a man who has acted in an agent's office, or something or other of that kind, a man whose sympathies are known to be with the landlord class; and very often these men's sympathies lead them very far.

83. You think the fact of such a person having acted in an agent's office would not be considered a sufficient disqualification?
Certainly not, because disqualification imputes that the man would not do what is right on his oath, and it is very hard to establish a case of that kind against a man.

84. *Lord Privy Seal.*] But I suppose no absolute proof is required in those cases?
At present none.

85. But

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85. But I mean in the cases of challenge for cause shown?
Tryers are sworn to try the question, and evidence must be given.

86. *Lord President.*] There have been instances of that kind in Ireland, have there not?
Yes.

87. Lord *Inchiquin.*] Is it a common thing?
No.

88. *Chairman.*] Is not that what they call a jury of discovery?
Yes, the tryers are to examine and determine whether there exists the alleged cause or not; and they receive evidence just as the jury would upon any other matter of fact, and the disqualification must be proved and found by them as a matter of fact.

89. Duke of *Marlborough.*] Who are the tryers taken from?
From the general body of jurors, or three persons are selected by the judge, and directed to try the question.

90. *Lord President.*] Do they try a particular case of disqualification, or do they try whether the whole panel has been improperly formed?
They try the particular cause alleged for the disqualification.

91. Lord *Inchiquin.*] Was this right of challenge the same under the old jury law?
Quite the same.

92. *Lord Privy Seal.*] Supposing that it were left to the judge to say whether the prisoner's challenge was justified or not, how do you think that would act; that would be a very different system from the formal trial before tryers which now exists?
It would be, but it would be a very invidious duty cast upon the judge, because the judge must decide it as a matter of fact, and he must decide upon some evidence; he cannot merely decide upon his own suspicions. The cause must be proved as a matter of fact. Some evidence must be given to show that the man who is objected to, if placed upon the jury, would not act fairly between the prisoner and the Crown. Now there may be a strong moral conviction in the minds of everybody that he is an objectionable juror, but it may not be possible to prove it as a matter of fact; and, if you cast upon the judge the duty of deciding it without giving any reason, I think it would be a duty which a judge would be very slow to exercise, and a very invidious one.

93. *Lord President.*] Then, in fact, without the peremptory right of challenge there would be no means of getting such a man off the jury?
I think not.

94. Duke of *Marlborough.*] Have you been long in forming that opinion which you expressed just now, that it might be necessary to do away practically with trial by jury?
I may say that it is by no means an opinion confined to myself; I know, as a matter of fact, that it is one which is very largely entertained amongst those who have had experience of the jury system in Ireland.

95. Should you say, in reviewing your own mind upon the subject, that previously to the existence of the present state of things in Ireland, which no doubt is very exceptional, you would have been prepared to have recommended such a course?
In reference to the class of offences that I have spoken of, I think that the reasons for that course existed before the present state of agitation almost as strongly as they do now. It was extremely difficult to get a conviction in clear cases of violence. For instance, as an illustration, I have had cases before me in which most serious injuries have been inflicted arising out of party conflicts, faction fights in New Pallas; and, as is usual, the prisoner is indicted generally for maliciously wounding, or inflicting grievous bodily harm, and also for a common

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common assault. Evidence has been given before me of the nature of the injury, a man's skull has been fractured, and he has been in hospital, perhaps, for a month or two months under treatment; and the evidence of the medical man has been that his life has been in danger; and, after considering the case at great length, a jury has brought a verdict of a common assault, as a kind of compromise; and, in cases of that kind, I have looked upon that verdict as rather a stretch upon the part of the jury.

96. Do you suppose that a verdict of that character would have been occasioned by intimidation, or by sympathy with the prisoner?

I think that both elements exist. As I have already stated, there is a strong feeling amongst jurors of antagonism to the law and general sympathy with criminals.

97. Then, if that state of things existed to such an extent previous to the present exceptional circumstances of Ireland, so as to induce you to form the opinion which you have just given, I suppose you would, practically, see no limit to the operation of such a system; I mean that, even supposing that the present exceptional state of things were removed, you would still have that sympathy with the criminal and antagonism to the law which would render the continuance of your proposal necessary?

I think it would in very many instances, and for that reason I suggested vesting the discretion in the Attorney General of exercising a general view of the whole case, and saying whether, under the particular circumstances of the locality, it would be desirable to have the trial conducted in the way that I suggest, or in the ordinary way, and I should hope for improvement.

98. You would limit it, I think I understood you to say, to cases of aggravated character?

I would limit it altogether, as I have already stated, to political offences, agrarian offences, offences arising out of religious differences, and assaults upon the police; I would certainly include the latter; and also aggravated assaults arising out of faction feuds, or anything of that kind, in which large numbers of persons were interested.

99. Is it a system that you would apply to the whole of Ireland, or to particular spots indicated by special conditions?

I cannot take upon myself to speak with any certainty for any portion of Ireland, except that with which I am familiar; I am familiar with Limerick and with the several counties on the Leinster circuit, Waterford, Tipperary, Wexford, and Kilkenny.

100. I think you said that you would give the Attorney General power in certain circumstances to direct that a trial should take place under the conditions which you have specified; therefore, that would be an elastic power which might apply in some parts of Ireland and not in others?

Certainly; in the exercise of that discretion it would be the duty, and I have no doubt the care of the Attorney General for the time being on a review of the whole circumstances, to say "I do not see in this case any grounds for supposing that there will not be a fair trial, and therefore let it proceed in the ordinary way." He would only direct it in those cases where it appeared to him from the evidence of the particular offence, and also from the evidence of the state of the locality where it arose, that such a course should be pursued; and I think it would be a safeguard in the exercise of that rather exceptional course of procedure.

101. Of course, having given that opinion, it would hardly be necessary to ask you whether any other amendment of the law might be of service in remedying the present state of things; I should have asked you what your opinion would have been about the revision of the lists. That seems to me to be the principal means by which it is possible to obtain a good jury, and, therefore, I would ask you whether, as an alternative to that which you have suggested, you would think that there is any possible mode of revising the jury lists by which they may be made of a more effective character?

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I am really not aware of any amendment which would meet the objections which I have mentioned to the present system. I do not think that increasing the amount of rating would really bring into the box a class of jurors who would not be, more or less, subject to the same influences, both of sympathy and of intimidation. You could not confine the jurors to one particular class; you could not, for instance, select the jury list; at least I am sure that there would be a tremendous outcry if any attempt was made to say that they should be selected from the gentry of the county, or from persons of considerable means, or anything of that kind. In fact that would be subjecting one class entirely to another, and a smaller class. My opinion is, that they would prefer to be tried in the manner that I have suggested. You will recollect that the judges have no connection in any way with the counties, and, generally speaking, the chairmen and resident magistrates have no connection with the counties. They are public officials, who are not supposed to be interested, or to have any particular sympathies one way or the other.

102. At present, as the jury lists are formed, there is practically no revision, is there, with the exception of such revision as may hinge upon the proper qualification existing?

Certainly there is no power whatever on the part of the revising judge to say whether such a man is a proper person to be a juror or not. Of course he strikes out those who cannot read or write; he strikes out all those who are suffering from physical debility, and he strikes out all those who are over age; but beyond that there is no mode of revising the list.

103. Has it ever occurred to you whether it might be possible to revise the lists by means of a court, such as, for instance, the chairman of the county, assisted by any persons who would bring before him the names of those who might be supposed to be objectionable persons on the jury list?

I am afraid you never could carry it out. The chairman could not exercise any judgment in the matter, unless he had evidence, and evidence to be of any value must be evidence upon oath; he would have to investigate the whole grounds of objection to each particular juror that would be suggested to him.

104. The chairman, I suppose, would necessarily not have much local acquaintance, but there might be officers connected with the localities, such as the clerk of the Crown and the clerk of the peace, who might bring the facts before him?

No doubt. That is returning very much to the old principle of selection, which, as I have already stated, I am afraid would be very unpopular.

105. The old principle of selection, as I understand, was an irresponsible selection on the part of the sheriff; but would you entertain the same objection to a judicial selection on the part of the chairman maintained and assisted by evidence?

I am afraid it could hardly work. The objection must be one of fact, and he would have to go into evidence in each particular case and prove something objectionable. You may know that a man's general tendencies and sympathies are in a particular direction, and you may have every reason very strongly to believe, you may have even a moral conviction that that man will carry out those sympathies in the jury box with very little regard, either to the evidence or to the obligation of his oath; but you could not prove that, and no chairman could possibly act upon such a mere conviction; I know that if it came before myself, whatever might be the strong impression produced upon me by representations, I would not act upon them unless I had something more satisfactory than that to guide me. I might be doing a man a very grave injustice.

106. What is the present state of the law as regards persons who have been convicted of any crime?

They are not on the jury list after conviction of any felony.

107. It must be felony?

Yes; but ordinary convictions of misdemeanour, and assault, and drunkenness, do not disqualify a man at present.

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108. Would you see any advantage in extending the disqualification?
I do not know. A man may be a tippler, and yet may have a very considerable regard for the obligation of his oath. A man may have been convicted of an assault, having given way to his temper on a particular occasion, and yet he may be, on the whole, a man who would in a case of this kind do what was right.

109. Still a great number of convictions would rather indicate a man of inferior character, would they not?
No doubt. I am afraid that if convictions for drunkenness, even repeated convictions, were to be a disqualification, it would certainly purge the jury list of a very considerable number of jurors.

110. *Chairman.*] His Grace was suggesting the possibility of a more scrupulous revision of the jury list; I suppose it might perfectly well happen that the circumstances of a given district at the time of the revision might be quite different from the circumstances at the time of a particular trial?
Certainly.

111. And, therefore, your suggestion that the Attorney General might have recourse to particular action with regard to a particular case, would meet a difficulty which would not be met by any more stringent revision of the list, perhaps some months beforehand?
So it appears to me.

112. *Lord Privy Seal.*] And a juror who might act very partially in a case of one kind, might be a perfectly fit juror in a case of another kind?
Yes. I have already said that one of the causes of the failure of the present jury laws is intimidation. Of course in a case of that kind, the intimidation would not be exercised, and he would be free from that cause.

113. I mean that if a man is excluded from the jury list, he is incapable of acting as a juror under any circumstances?
Quite so.

114. Whereas under many circumstances, and in many classes of cases, he might be a fit juror?
Quite so.

115. Lord *Inchiquin.*] You said something about the jury being intelligent in certain cases and not in others, did you not?
I never find any want of appreciation on their part of the evidence in cases of offences against property such as larceny, cattle stealing, or anything of that kind. They could in such cases always thoroughly understand what was the bearing of the evidence, and their verdicts were generally quite in accordance with it; and, therefore, the conclusion is forced upon one that the very different conduct pursued in reference to the other class of offences that I have mentioned is wilful, and not from want of intelligence.

116. But there was said to be more intelligence amongst the jury under the old system than under the new, and that is the reason why I ask you the question whether, under the alteration which has taken place in the jury laws, you find that you get a less intelligent jury than you used to get under the old system?
I do not think that the present objection to the jury system is so much on account of a want of intelligence as on account of the causes that I have enumerated.

117. Because they are intimidated and threatened?
Yes, because they are intimidated and threatened.

118. And you think that, if the alteration which you suggest of trial before judges was the law, it would help very materially to put a stop to the state of crime which exists in Ireland?
I think so.

119. And you think that no other course but that is open at the present moment?

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The defects in the jury system which I have mentioned have produced an almost entire paralysis of criminal justice in Ireland. Of course the ordinary law can only be carried out through the agency of juries; and, if juries will not convict, the ordinary law is powerless.

120. But you declined, I think, to put any limit to the time for which you thought that such a state of things ought to continue?

The qualification which I have suggested is, that the responsibility of directing an exceptional mode of trial should rest upon the Attorney General; and that function would cease to be exercised by him when he found the country returning to such a state as would allow juries to act fairly and justly; so that, in point of fact, I do not suggest that the change should be universal or continuous; I only say that there should be power upon the part of the Attorney General to resort to this exceptional mode of trial whenever, in his discretion, he was satisfied that it ought to be resorted to.

121. In exceptional cases?

Yes, in exceptional cases; and that would, of course, gradually cease if at any time the country returned to such a state that the juries would discharge their duties fairly.

122. Lord *Penzance.*] But do I rightly understand that all the difficulties that have arisen about conviction have arisen only since the country has been in a disturbed state?

No, I have distinctly stated that they existed prior to that time. As long as I have known the country, in particular classes of cases, when the locality has been more or less disturbed, the same results have always followed.

123. Then it seems to follow from that that the method of trial which you suggest ought not to be a temporary measure, but a continuous one?

That would depend upon circumstances. I only leave an opening for returning to the old jury system, whenever the time arrives that it can be resorted to. It does not absolutely abolish it for ever; but it unquestionably would suspend it for a considerable time, as long as the Attorney General was satisfied that it ought to be suspended.

124. Lord *Ardilaun.*] In answer to a question of the Lord President's, whether, if your suggested tribunal were adopted, it would effect any improvement in obtaining evidence, you said that it would not; but have you not seen many cases in which the verdict was in direct opposition to the evidence given?

Numbers.

125. And in such cases a proper verdict would be obtained under the tribunal which you propose?

Certainly.

126. And those cases are very numerous?

I have, unfortunately, had many cases before me in which the evidence was as clear as noonday for a conviction, and where the jury have found the prisoner not guilty.

The Witness is directed to withdraw.

MR. HENRY ARTHUR BLAKE is called in, and Examined; as follows:

127. *Chairman.*] I BELIEVE you are Resident Magistrate at Tuam?

Yes.

128. And you have given some attention to the operation of the Jury Laws in criminal cases in Ireland?

I have.

129. Will you state to the Committee what opportunities you have had of making yourself acquainted with the operation of those laws?

General observation for 22 years. I have been a constabulary officer for 17 years, and a resident magistrate for five years.

 130. While

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130. While you were a constabulary officer, what special opportunities had you of familiarising yourself with the subject?
The opportunities which presented themselves in my attendance at quarter sessions and at assizes. Almost every constabulary officer attends the assizes in his county.

131. Will you state to the Committee your opinion as to the way in which juries in criminal cases perform their duty within your own experience?
I think that in cases where there is a prevailing public sentiment in either political or agrarian cases, it is very difficult to get convictions.

132. Not only that it is difficult to get evidence, but that even where the evidence is forthcoming it is difficult to get a conviction?
Frequently.

133. And you limit that statement to a particular class of cases?
Yes; I do not think there is any difficulty, or, at any rate, I have never seen any difficulty present itself in cases of larceny or robbery.

134. Is that failure on the part of the juries traceable to a sympathy in the one class of cases which they do not feel in the other class?
I think it is traceable partly to sympathy and partly to an entire absence of moral courage.

135. Are you aware of cases where there has been actual intimidation?
Yes.

136. At what stage does that intimidation occur?
Before the assizes. Jurors have been visited and warned that if they were called upon the jury, and if an adverse verdict were found, they would be held responsible.

137. That, in a district which might be spoken of as highly organised, would, I suppose, be a very effectual deterrent?
I should say that it would be a very effectual deterrent in almost the entire south and west of Ireland at present.

138. You would not make that statement with reference to ordinary times:
I should in certain cases. In cases of agrarian crimes, I think, at any time, there are certain people on whom such a threat would be effective.

139. Should you make it with regard to most crimes of violence, such as assaults?
Hardly so much as to assaults, because, as a matter of fact, in assault cases the punishments given at assizes for ordinary assaults are so small that it is hardly worth their while to take the trouble about them.

140. In your opinion would any change in the present qualification of jurors lead to an improved state of things?
No, I do not find that the want of moral courage is limited to any qualification.

141. You are, of course, aware that the rating qualification was raised by the Act of 1876?
Yes.

142. And you have not observed that since that alteration of the rating qualification there has been any conspicuous change in the character of the jurors?
There has been a decided change for the worse.

143. In spite of that alteration?
Yes, in spite of that; but I think it is traceable to a different cause.

144. Will you state what that cause is?
In every jury panel there are, of course, a number of people who would not be driven from their duty by any threats of this kind, magistrates, and gentlemen of position in the county. With a smaller jury panel there would be fewer in proportion of people who would be so influenced. Now, the power of challenge

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challenge given to prisoners, in my opinion, enables them at present almost to eliminate from the jury panel the respectable element.

145. I am not quite sure whether I understand how you arrive at that conclusion. You say that the smaller the panel the larger will be the proportion of trustworthy or independent men?

The larger will be the proportion of honest or respectable men. Take a panel summoned for the assizes of 200 out of an entire jury list of, say, 1,500. Then each man being supposed to be summoned in his turn, if you assume that there are 200 independent men in the county, naturally a larger proportion of the 200 so summoned will be upon that panel than if the jury list has been enlarged to 3,000 instead of 1,500; because the number of independent men who are at the top of the list remains constant, whereas the men who are swayed by either fear or sentiment is made greater; in other words, the proportion of independent men is smaller.

146. On the jury list; supposing that there is such a proportion of this class of independent jurors, can you depend upon finding in a jury box that same proportion?

The probability will be that you will, taking it for granted that the names are probably taken from the list in their proper turn, according to the alphabetical order, and that the list has been properly made out; that is to say, taking one independent man to six in the one case, and one to 12 in the other, there is a greater probability, of course, of finding one independent man in the former jury panel than in the latter.

147. Is it the case that jurors of that better class whom you refer to are willing to take their share of service on the jury?

No, I do not think they are.

148. They are liable to be fined if they do not answer to their names when the list is called over?

Yes.

149. Does that fine, in your opinion, act effectually in securing their attendance?

No. I think the danger of acting independently in the jury box is so certain that a fine of 2 *l.*, or 3 *l.*, or 4 *l.*, is not large enough to secure the attendance of a man who looks upon the fine, as certain men would look upon the fine as the insurance paid of their safety.

150. But even putting aside the element of danger, I think it was stated in evidence before the Committee of the House of Commons, which inquired into this subject, that jurors of the better class have a considerable dislike to finding themselves shut up with nine or 10 frieze-coated farmers in a long trial?

Unquestionably they have.

151. And that feeling prevails now?

Certainly.

152. In your opinion, would it be desirable to take any steps in order to secure the attendance of jurors of this better class?

I think it is all important in criminal business.

153. Would such men be likely to guide the opinion of their more ignorant colleagues on the jury?

They would guide the opinion of a small proportion; but I think that the importance of their presence would be greater from another point of view, that is in securing a disagreement, taking for granted that the jury of a lower qualification would acquit.

154. Will you state to the Committee whether you have any suggestion to make by which these gentlemen might be compelled to do their duty as jurors?

I think that if the jury list were properly made out, and if the names were taken in regular order, a proportional attendance would be secured. But I know more than one case where gentlemen of my acquaintance have never been summoned on a jury for 10 years.

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155. How has that come to pass?
They do not know; they have assured me that there is no private arrangement with the sheriff or with anybody else.

156. Have you any idea, yourself, how it has come to pass?
I think that there is carelessness in the office of the clerk of the peace.

157. Lord *Inchiquin.*] It is the clerk of the union, is it not?
Primarily; but then the jury list is kept in the office of the clerk of the peace.

158. *Chairman.*] The names are taken alphabetically, beginning at the top of the list of each letter, are they not?
That, I think, is the present system, but I do not know accurately the way in which things are done in that office; nor do I know whether there is a larger proportion, for instance, of the letter B. or the letter M. summoned, than of a letter under which there might be very few people's names in the county. That is a matter of detail as to which I cannot give evidence.

159. What means are there at present of excluding from service on the jury persons who notoriously would be unfit to be entrusted with the duty of trying a case?
The Crown has power to order any number of people to stand aside.

160. Without assigning a reason?
Without assigning a reason until the jury panel had been exhausted; and the prisoner in cases of felony has power to order 20 jurors to stand aside without cause. But after the panel has been exhausted it is then called over again, and I know that, on the part of the prisoner (I am not sure whether it is so on the part of the Crown), cause must be shown to a jury of discovery, consisting of two men, who are then and there chosen in court and sworn.

161. In your opinion, is the right of challenge, without cause shown, essential either to the prosecution or to the defence?
I think it is mischievous on both sides.

162. Lord *Penzance.*] That is to say, what is called the peremptory challenge?
Yes.

163. *Chairman.*] Will you explain that a little to us?
The right of challenge only arose at a time when the jury system grew out of the old system of juries, where the accusation was made by the jury. The right of challenge then, practically, arose when the prisoner had a right to object to one of the jury. Afterwards the entire summoning of the jury being in the hands of the sheriff, a single man, the right may probably have been very necessary, because, otherwise, the prisoner was placed body and soul in the hands of the sheriff. But now that the sheriff has no longer this power, if the jury list has been properly made out, and if the jury panel has been properly summoned, I do not see why either the Crown or the prisoner should have the right of peremptory challenge without showing cause.

164. Where the challenge is for cause shown evidence as to facts has to be produced?
Yes. For instance, take such a case as might come before any court in the west of Ireland at the present moment, of an outrage arising out of this Land League movement. Probably the evidence would be given there that a man was the president or the secretary of a land league association in that part of the country, or some such evidence as that, not otherwise perhaps affecting his personal character. Then if the challenge were done away with, I should also do away with the jury of discovery, and leave the determination as to the eligibility or otherwise of the juror to the judge.

165. It was stated to us just now that there might be frequently cases where a particular juror was notoriously a man with strong sympathies unfitting him for the impartial discharge of his duty, and in which it might, nevertheless, be very

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very difficult to produce evidence of facts showing that he was not likely to do his duty impartially?

But notoriety is a fact, and that could always he produced in evidence to the judges by the police.

166. Have you any other suggestion to make to the Committee for the removal of the objections to which you have referred?

Yes. If such right were done away with, and the presence of the better class of jurors could be secured upon the jury, I take it that in cases where acquittals take place at present disagreements would result instead. Then, instead of looking upon two disagreements as a strong presumption of innocence, as they are looked upon at present, I would empower the Attorney General, in cases of two disagreements, to send the case for trial before three judges; and, furthermore, if an acquittal palpably against the weight of evidence that has not been displaced has taken place, I should recommend that the judge exercise a power which, I believe, has never been taken away, namely, to defer the discharge of the prisoner, and let the case be remitted to the Attorney General for his further directions upon it, as to whether it should be remitted to the judges, or not.

167. Would you give that power to the Attorney General only where a district was in a state of disaffectin or excitement?

A district may be perfectly quiet this year, and it may be in a state of overt insurrection next year. It is quite impossible to define it in that way. I should make it a latent power extending all over the country. I should further recommend, in extreme cases where it is almost impossible to secure a jury, that the present practice (you could not call it a system) of changing the venue merely from one town to another within the circuit should be extended, and that the venue should be changed to the north of Ireland, because in the north of Ireland (I have experience of every part of Ireland) you find in the jury box men of every shade of opinion.

168. The venue is now frequently changed?

It is.

169. Is there any limit to the power of changing the venue from one district to another?

I believe there is no limit; I have not looked into the question, because, as you probably know, I am only giving evidence on general and broad lines of what comes within my own knowledge; I have not studied the question specially for the purposes of this Committee; but I think power exists to change the venue to Dublin, and I do not see why it should not exist to change it to Belfast, or to Downpatrick.

170. Therefore that would be not so much conferring a larger power as using an existing power more liberally than it is at present used?

I do not make any suggestion as to conferring fresh powers; I think every suggestion made by me is a power at the present moment in the hands of the judges.

171. Lord *Penzance.*] Does that include trials before the judges?

No, certainly that is not an existing power; I mean the other powers. Probably in none of these cases are there more complaints made than in cases of assault being sent forward to quarter sessions, assaults arising out of local troubles, either political or agrarian; and I think the difficulty might be met in that case by giving increased jurisdiction to the magistrates.

172. *Lord Privy Seal.*] Then your first suggestion is that means should be taken to procure a larger attendance of independent jurors, with a view at all events of preventing an improper verdict of acquittal, although you may not be able to obtain a proper verdict of guilty; but I do not quite understand how you are to secure this better attendance of the higher class of jurors?

What I propose will only secure a greater probability of the attendance of the higher class of jurors, by giving every man his proper turn.

173. Does that mean by effectually carrying out the law as it stands?

By effectually carrying out the law as it stands.

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174. Which you think is not properly carried into effect owing to the carelessness of the officials?
Yes.

175. Do you think that anything could be done in the way of increasing the amount of fines to secure the attendance of the higher class of jurors?
I think it might. That is a matter which is entirely in the hands of the judges. There is a minimum fine 2 *l.*, but they have a power to call for any fine after that.

176. Lord *Penzance.*] There is no limit?
There is no limit.

177. *Lord Privy Seal.*] Do you know whether the fine for non-appearance when the panel is first called over, is enforced by the judges?
Under the late Act I think the original fine must be enforced, except a special application be made; I rather think that under the late Act it is compulsory.

178. But that is only 40 *s.*?
It is only 40 *s.*

179. Which is sufficient to compel the attendance of the poorer class of jurors, but which would have no effect upon those who are better off?
Quite so.

180. Do you think, from your experience, that a jury of the higher social class runs as much risk in the performance of his duty as the poorer and humbler men?
No, I do not; in the first place he is not so helpless and he is not so exposed.

181. Probably there is not so much expected of him in the way of getting a prisoner off, as would be expected from one of the prisoner's own class?
No, unless he has expressed his sympathies freely with the people upon general grounds.

182. Do you remember the days, a good many years ago, when convictions in the case of agrarian murders were pretty frequently obtained?
I cannot say that I remember them, but I have read about them, and I know about them.

183. That was the case as a matter of fact?
It was, but then I think at that time the jury was almost entirely composed of magistrates and gentlemen; the jury panel was entirely in the hands of the sheriff.

184. Do you think that the Attorney General would be the right official to whose discretion to entrust the trial of a case under the conditions you have stated, without a jury?
I think so, for he is the official who at the present moment decides whether there is to be a trial at all, or not.

185. He is the prosecutor, either directly or indirectly, is he not?
He is very indirectly the legal prosecutor; that would be a matter of detail.

186. It might possibly, for instance, be left to the Lord Lieutenant?
It might be left to any of the higher officials.

187. But you would not dispense with the jury, except where two juries had disagreed?
No.

188. That is the condition which you put upon your recommendation?
That is the condition that I should put; I should like to give the jury an opportunity of doing its duty, if possible.

189. Lord *Penzance.*] So that a man might be tried three times?
He might be tried three times.

190. Lord

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190. Lord *Inchiquin.*] But I think you suggested just now that he should be tried again, even though he was acquitted?

Under certain circumstances; I do not suggest that in every case in which two disagreements have taken place, a man is to be tried again; I only suggest that in cases where two disagreements have taken place, the Attorney General shall have the power if he chooses, on being satisfied that the evidence was so strong that it ought to have secured a conviction.

191. *Lord Privy Seal.*] But then that power could not be exercised unless there had been two disagreements?

That is my suggestion; I should not like to see it exercised without giving the jury an opportunity of doing its duty.

192. *Lord President.*] Do you draw any distinction between the juries since 1871 and the juries before that date?

Yes, there is a distinct deterioration in the juries since 1871.

193. Do you think that the old system of summoning the juries worked well?

No; I do not think either system worked very well in Ireland; there was always a great deal of friction; I mean to say that, under the old system, I know that where there was a certain class of crimes, the sheriff frequently made out his jury panel, having regard to the class of crimes that were to come before the assizes.

194. And that had a bad effect in the country?

I can conceive of its having a bad effect; I cannot say from my own knowledge or observation that it has had a bad effect, but I think the principle was bad and wrong.

195. Did the idea prevail in the country that the juries were not impartially selected?

Yes, the idea did prevail, not always that the jury were partial against the prisoner; I mean that the feeling of the people both then and now is really not in favour of impartiality in the jury.

196. But I meant as to the selection by the sheriff; had they confidence in that?

Certainly they had not.

197. And that had a bad effect in the country?

I should think so.

198. You would not like to go back to that system of selection of juries?

Certainly not.

199. Would the old juries have been affected by the present state of things in Ireland?

Yes.

200. You would not depend upon the old system of juries working satisfactorily and efficient now?

I do not think the old system would work satisfactorily for this reason: I think the feeling of the people, and probably with a certain amount of reason, would be that the jury panel was summoned specially by the sheriff with the view to convictions.

201. You spoke, I think, of the intimidation of juries; I suppose there is also intimidation of witnesses, is there not?

Oh, yes.

202. At the present moment can you get evidence in Ireland sufficient to bring a case, with a fair chance of obtaining a verdict, before the Assizes or the Quarter Sessions?

The evidence in a certain class of cases in Ireland is almost entirely confined to the evidence of the police, and the circumstantial evidence produced by them.

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203. Was that so at all times?
I think very much so, in a certain class of cases. Further back, perhaps 25 or 20 years ago, they more easily obtained evidence; but 20 years a man might come forward and give evidence and receive his money and be lost; he might go to Australia, or even to America. Now a man cannot do that. The organisations is so complete that I do not think a witness who came forward and gave evidence would be safe in any part of the world. I cannot put my finger upon any part of the world where I think he would be safe.

204. Whatever system of trial there was now, there would be a difficulty in getting sufficient evidence even to satisfy a judge without a jury?
Great difficulty.

205. Do your remarks apply to an exceptional state of things such as we are in now, or to the general state of things that prevails in Ireland?
In certain parts of Ireland there is always, with regard to certain classes of crime, a state of things to which my remarks would apply. For instance, in certain parts of Limerick the faction fighting has been resumed; take a murder, resulting out of faction fighting, or in Westmeath out of Ribbonism, or in Tipperary, out of any other agrarian agitation that has taken place; I think that that profoundly affects any jury that you can bring together.

206. Have you any experience of city juries as compared with county juries?
I have experience of the Belfast juries; they are very superior juries.

207. You have no fault to find with Belfast juries under the present system?
No, none.

208. You have not had any experience in Cork, or in any of the larger cities?
No, I have had no experience in Cork.

209. Lord *Inchiquin.*] Your suggestion is that the case should be tried before a jury first, and then, in case of failure, before a Commission afterwards?
Yes.

210. But do you not think that, if there is no great intimidation as there appears to be at the present moment amongst jurymen, it would be better temporarily to suspend trial by jury altogether, rather than to put a man on his trial in that sort of way, and then give him the chance of having to be tried, certainly more than once and perhaps three times?
I should not suggest it, because I think it would be too great a wrench to the jury system.

211. *Lord President.*] As to men being tried more than once, I suppose you know instances in Ireland where a man has been tried two or three times under the present system?
Yes.

212. Lord *Inchiquin.*] Do you recollect a case that occurred in Cork, and that was tried in Clare, I think in the Winter Assizes, where a man was put on his trial three times for posting threatening notices?
Yes, I remember it.

213. Were you at the Cork Assizes?
I was not at the Cork Assizes, but I remember the case.

214. Do you remember the opinion of the judge upon that case?
Yes, I have read the opinion of the judges in various parts of Ireland.

215. That was a notorious case?
Yes, but I take that as a typical case.

216. I think that man was put on his trial three times; he was tried first in Clare, twice in Cork, and I am not certain if he was not tried a fourth time, but certainly three times?
Yes; then after having been tried, say, once in Cork and once in Clare, under

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under the system I have advocated, the Attorney General would probably remit the case, if it was a strong case, and the man was palpably guilty, to the judges.

217. Supposing, in such a case, the man had been acquitted, what would have been the state of things?

If that man had been acquitted, it being perfectly clear that the judge was quite satisfied on the grounds placed before him in the evidence of the man's guilt, then, under the system that I advocate, the judge would tell the prisoner to stand back instead of discharging him, and send his notes, or copy of his notes, to the Attorney General, and even that case might be remitted to the judges.

218. Do you recollect another case of a murder that was committed close to the town of Ennis, in Clare, about two years ago, in which the jury also disagreed three times; the evidence was entirely circumstantial; it was tried first of all in county Clare, then again in Cork, and the third time in Clare; and the end of that case was that the man was, I believe, sent away, or allowed to go abroad?

I do not recollect that case.

219. Rather than have such notorious failures of justice as that, do you not think that it would be much better that a commission of judges should, under the present circumstances, try all such cases as crimes of violence of that kind, and agrarian crimes, rather than that they should be brought before a jury at all?

No, I do not think so, for this reason: that there have been some convictions, even in agrarian cases, and I should not like to assume that there was not going to be a conviction before the jury had had an opportunity of deciding upon the case. Besides, I think that with the possibilities behind the case, with the knowledge that the case was not to end with the jury, it would have a considerable effect upon the jury. There are two classes of judges who try cases. One judge places everything on each side in such detail before the jury, that, probably, at the end of his charge, the jury do not know what to believe; but if they find a verdict of guilty then he gives a severe sentence. There is another class of judge who places the case in broad lines before the jury, but in such a way that if the case has been made out he leaves very little doubt in the minds of the jury as to what his opinion of the jury will be if they do not find in accordance with the evidence: but if they do convict he gives a very light sentence. Now, if you take the case of such a judge as that, my impression is that the jury, even the friends of the prisoner, would probably rather convict at the time than disagree with one or two jurors, with these possibilities of the case being tried before men who would probably pronounce a heavier sentence.

220. With regard to the fines, do you think that fines have been inflicted in many instances lately for non-attendance of the respectable classes?

Yes.

221. And still that has not induced them to appear?

I have seen fines of 5 *l.* inflicted for non-appearance. I think that if it were known that the minimum fine were 5 *l.*, or that 5 *l.* would be inflicted, the respectable classes would have attended.

222. But, as a matter of fact, they think it?

As a matter of fact they shirk it for the two reasons: first, the element of danger; and, next, there is the element of the terrible unpleasantness, not alone in the box, but in the event of the jury being detained. I know, within my own knowledge, two cases where a jury were detained over night, and the discomfort was so extreme, from the way in which they were packed together in this jury box, and from the damp beds, that I do not believe they would have waited another night on any consideration. I know one case where, in the morning, they came and said they did not wish to hear any more evidence; they had made up their minds, and acquitted the prisoner.

 223. Viscount

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223. Viscount *Hutchinson.*] I suppose I may take it, generally, that your opinion is that there is a certain class of crimes existing in Ireland at this moment, and which will, probably, continue to exist, not only under this agitation, which require some further machinery than the present mode of trial to meet it; do you agree with Mr. Purcell upon that point?

Not entirely. It requires a change in the present machinery, and, possibly, there may be further machinery required.

224. Would the power of calling special jurors to try cases meet the difficulty?

Certainly it would help to meet the difficulty.

225. Then you would have a better class of juror, and men you could put more confidence in?

My impression is, that when the question comes before the Irish people of the picking of a special jury it would be better at once to go from the jury to the judges. I think the feeling of the people would be more in favour of the judges than of a special jury.

226. In fact, you consider that the selection of a special jury for the trial of these cases might create the idea that they were going back in some way to the old system of selection?

That the jury was specially selected for conviction.

227. *Chairman.*] Where special juries are resorted to, are they chosen by ballot?

There is a very intricate means by which they are chosen; I do not know the exact way in which they are chosen, but it is to a certain extent by ballot.

228. From a restricted list?

From a restricted list, with the power of challenge, six on either side.

229. Lord *Penzance*] You said you thought the present system of challenging mischievous; I did not quite collect why you thought it mischievous; what harm does it do?

Because, I take it, that in an ordinary jury panel of 200 names, there are not more than about 20 men of the independent stamp that I hope to see in a jury box, and to secure, if possible, in it. Therefore the peremptory challenge of 20 men would have the effect, practically, of obliterating those 20 men.

230. You have a very long experience, as I understand; you said of 22 years, I think?

Yes.

231. I do not think you have told us, as a matter of fact, quite independent of opinion, what has been the result of your observation during those 22 years with regard to the acquittal of obviously guilty people?

I think a very large number of obviously guilty people have been acquitted, but at the same time I have seen a very large number of people who have been found guilty, and either punished severely, or hanged. I do not think that the number of acquittals is so great, or that the acquittal is so universal in serious cases before a jury that it would justify the doing away with the jury system.

232. The last witness said that the criminal law practically was incapable of being enforced, because the jurors would not convict; is that your experience?

I cannot say that that is my experience.

233. But you do know that, that under your own observation, there have happened numerous cases in which some cause has been at work, which has secured the acquittal of the prisoner, or the disagreement of the jury?

Yes, that happens very often.

234. Has

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234. Has that increased of late times during these present troubles, or was it so always?
I think it has hardly had time to work during these present troubles. It has been always there in a certain class of crime, and I am quite sure that at the present moment, when the feelings and the passions of the people in certain parts of Ireland are so deeply roused, that cause must work in an increased ratio

235. Is there, or is there not, a general feeling of disinclination to support the law amongst the class that attend as jurors?
Unquestionably there is such a feeling.

236. Is there any general feeling of reverence for the law, and a desire to see it enforced?
None whatever; I do not think that there is any feeling whatever of reverence for law; there is a strong underlying feeling of reverence for justice, as justice.

237. Capable of being, I suppose, very much swayed by partisan feeling and political feeling, and agrarian feeling?
Of course.

238. You were saying that if the better class of jurors to a larger extent could be got to serve, you thought that that would not exactly, I think, cure the evil, but that it would go so far as to procure disagreements?
Yes.

239. One man, of course, would be sufficient for that purpose. Have you considered the propriety or advisability of resorting to the verdict of the majority?
I think it would be fatal in Ireland, resulting in acquittals in almost every case.

240. You think the best chance for the law being observed is, that some independent man may stand out for a conviction?
Yes.

241. And that if you had a verdict of the majority, that would end in an acquittal in cases of this kind?
Yes.

242. With regard to the better class of jurors, I know it has happened in this country (I do not know whether it has in Ireland) that men have offered a trifling bribe to the officer who makes out the list, to get him to omit their names; is anything of that sort done in Ireland?
I cannot say; nothing of that sort has come under my observation; but, as a matter of fact, it has come under my observation that certain individuals have not been summoned. Their names may be on the list, and even under the present system your name may be on the list for ever, and you may never be summoned.

243. But are the lists truly made out?
The lists themselves may be truly made out, but from one year to the other there is a certain change in the list, and if the sheriff chooses ten names from the list of names beginning with M, it is palpable that if your name is the fifteenth, you may not be summoned, and it is possible that next year your name may not come into the ten again.

244. *Chairman.*] Then they begin at the top of the list?
That is a matter of detail which I do not know exactly; but in broad lines, that is the way the thing is done.

245. Because, with regard to Lord Penzance's question, if they took the first ten names beginning with the letter M in one year, and if, in the following year they took the second ten, the fifteenth name would not escape?
He

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He would not escape if the list remained constant; but the alphabetical order of the names is only so far as the first letter is concerned. For instance "Ma," may be No. 15 on the list for these assizes, and "Ma," may be No. 3 on the list for the next assizes. Then they mark opposite certain names that have attended; that, of course, would only affect one sheriff's list for one year; but it is quite possible that one man's name may be shuffled about from one place to another, and that he may never be called upon to attend, whereas, if the list were made out alphabetically to two letters, and such a list were printed, and the names were compulsorily summoned from the top and the bottom of the list, new names being added in the middle of the list, no names could escape.

246. Lord *Penzance.*] With regard to special jurors, you say you think that if offences, such as you have been alluding to, were tried by special jurors, that might cure the evil?

It might assist in curing the evil in one way, that is to say, it might increase the number of convictions.

247. It would increase the number of convictions, would it not?

It does not follow entirely. Of course you may find men on the other side who would stand out on a special jury for an acquittal.

248. But do you think the class from which the special jurors are drawn are open to sinister influences?

I think it is very difficult to define the line at which an Irish farmer is not open to sinister influences.

249. And particularly, I understand you to say, that now there is an organised system of so complete a nature, that if a man renders himself obnoxious, he may be pursued in any quarter of the world?

I think he is absolutely unsafe in any quarter of the world.

250. What do you draw that conclusion from; have any circumstances come to your knowledge upon which it is based?

Circumstances have come to my knowledge. I know a case of a man who gave information to the police when I was a constabulary officer, and he received something from the Government and went to Australia, and he was murdered in Australia within, I think, a month; a man simply walked up to him and shot him.

251. With regard to the special jurors, you are aware that, if there are not sufficient special jurors present, it is usual to fill up the box with what are called tales men?

I do not know the system thoroughly; I have not looked into that.

252. With regard to your suggestion about the trial, you suggest, as I understand, that if there are two disagreements by juries, then the man shall be tried by judges; does it not occur to you that trying a man three times over in that way for the purpose of getting a conviction has the aspect of hunting him down, as it were?

Yes, but I think he ought to be hunted down if he is guilty, and if juries have palpably not done their duty.

253. Then he equally ought to be hunted down and tried before the judges in the first instance?

But my feeling is that we ought to give a jury an opportunity of doing its duty, because cases have occurred where juries have done their duty.

254. Is it not less obnoxious to come to a general conclusion that juries are not to be trusted in a certain class of cases, and therefore to hand over their functions to somebody else, than it is to try a particular case before a jury, and because they do not convict, then to hand it over to somebody else who may be expected to convict; would that not be looked upon by the people as less just?

No, I do not think it would; I think the general proposition will be more obnoxious in Ireland, leaving other larger considerations out for the present; but

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but I think that in these cases where juries disagree or acquit, there is no want of intelligence upon the part of the people; there is a superabundance of intelligence on the part of the jury, and they know perfectly well whether a man is guilty or not. At the present moment it is looked upon as a game, a trial of skill between the witnesses for the prisoner and the Crown; but at the same time, and though there is a strong probability that the jury will not convict, I should be averse, as a general proposition, to taking matters out of the hands of the Irish juries, and placing them in the hands of the Irish judges.

255. Duke of *Marlborough.*] I suppose at the present time it would be rather difficult to find a jury that was not at any rate partially composed of members of the Land League?

It would be very difficult in certain parts of the country.

256. With regard to the case to which you alluded, of a person who had been murdered in Australia, I suppose that was a case of an informer?

Yes, it was a case of an informer; it was not the case of an ordinary witness.

257. You would not suppose that conscientious jurymen discharging their duty properly would run any risk of that sort?

Yes, in certain parts of the country I can conceive cases where a juryman would run a risk, though not a very great risk.

258. Bearing in mind your suggestion that you would, under certain circumstances, do away with trial by jury, do you conceive that there is any mode in which the jury list, in the first instance, might be improved in any way, or in which the selection of the jury might be improved in any way, so as to render the jury in the first resort more capable of giving a fair verdict?

I think that it would be better to leave the selection of the individual jury to the last, because, supposing there are certain reasons why a man might be a bad juryman, there would be ample reasons, in the event of his being called upon a certain list, for the Crown to put forward before a judge in their challenge against the juror. If a man is challenged before the revising barrister, you go to all the trouble of challenging, and producing a certain amount of information, and all the rest of it, whereas, if he were challenged when called upon a jury, that would not be necessary. For instance, there are certain men who would be perfectly safe in a case of larceny.

259. The power on the part of the prisoner to challenge is limited to cases of felony, is it not?

I think he can challenge up to six in cases of misdemeanor; but I am not quite sure.

260. Is it not the case that, upon some occasions, the Crown indict a man for a lesser offence in order to diminish the power of challenge?

That I can conceive; but I cannot say that any case has ever come within my own ken where it has been done, and the necessity for that, I take it, would be removed by the system which I propose.

261. You said that there was no difficulty, generally, in securing a conviction in cases of larceny and robbery; would that opinion apply to the present time?

Yes; there is no difficulty in securing a conviction in cases of larceny, or of robbery.

262. Then it is only in cases of violence that it is difficult to get a conviction?

Yes, of course, robbery would be a case of violence; but I mean that there is a difficulty in obtaining a conviction in a case of violence arising out of an agrarian cause, or a political cause.

263. Lord *Penzance.*] Threatening letters, and so on?

In the case of threatening letters it is extremely difficult to get a conviction

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under any circumstances, except you see a man writing the threatening letter, and putting it in the Post Office.

264. Duke of *Marlborough*.] Did I correctly understand you to say, with regard to the alphabetical arrangement of the jury list, that now the list is in such complete order of the alphabet, taking all the letters through, that the objections which you have stated arose from that cause?

I do not think there is complete order at present. So far as I know, I do not think that the law compels any order beyond the first letter; I mean to say that, for instance, "Moffatt" might be the first name on the list, and "Maxwell" might be last.

265. With regard to the change of the venue, would it be your opinion that a change of venue might, under certain circumstances, take place out of Ireland?

Yes, I should like very much to see the possibility of an interchange of venue between England and Ireland; but I think that, practically, a change of venue to the north of Ireland, where juries are very satisfactory, and where you get upon the jury every shade of opinion, would work well. We see every day that the venue is changed from one county town to another.

266. The effect of the winter assize has been practically to bring about a change of venue in many cases; has it not?

Certainly it has.

267. Have you observed a beneficial result from that?

I think it has been beneficial. I think there are certain cases in which it has worked well. The winter assize takes the mere local element out of certain cases, which is a very strong element sometimes.

268. Lord *Inchinquin*.] But in times of agitation like these, it makes very little difference?

I think at the present moment you would get a very good jury in Belfast. I have seen the operation of juries in Belfast for two or three years, and they are extremely satisfactory.

269. Duke of *Marlborough*.] In order to obtain a better mode of making out the jury list in the first instance, as well of summoning jurors who might be placed upon the jury list, has any mode occurred to you?

No, I cannot suggest any other mode, except by putting another straw upon the already overloaded back of the constabulary. The jury list, as probably your Grace knows, is made out by the clerks of the union, who receive from the relieving officers the names of the jurors. The relieving officer receives 4 *d.* for every name that he returns, and the clerk of the union receives 4 *d.* for every name that he copies, and sends forward; and I need not tell you that names crop up and reappear that have been removed from the jury list many times.

270. Lord *Penzance*.] Do you not think that these men sometimes receive a little gratuity not to put a name down?

Having regard to our common human nature, I think it is possible that they may.

271. Duke of *Marlborough*.] What officer would you suggest should make the jury list, instead of the persons who now do it?

The jury list might possibly be made out in the sub-inspector's office; for instance, the men who are taking the agricultural statistics could take the jury list at the time, if they were allowed extra pay for the extra work.

272. Would it involve a good deal of labour?

It would involve a good deal of clerical work, but I know that it could be done in that way, and more satisfactorily done than in any other.

273. There

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273. There are persons whose names it would be very desirable to have on the jury lists, and who are not on the jury lists, namely, persons who are not rated; no person who is not rated is not on the jury list?
No.

274. But there might be eldest sons of Peers, or gentlemen of the county, who would not be rated, living with their fathers?
Yes, that would be a class of persons whom it would be very desirable to have. It is difficult to define, unless you define it by the rating of their fathers' properties.

275. Any person occupying the position of deputy lieutenant, for instance?
Yes, I think you would not find in any county in Ireland more than two men occupying that position who are not rated.

276. You think that there are not many of the class of persons in Ireland who ought to be on the jury list, who are not rated at present?
I cannot say, but I do not think it would make any appreciable difference in the jury list, even if you put in all those young men, because, after all, the eldest sons generally go away; they are in the army, or in professions after they are of age.

277. I think I understood you to say that, in your view, it would be desirable to have as large a list as possible, in order that as large a panel as possible might be summoned?
No, that was not my view. My view was, that practically a smaller list would have been more satisfactory, for this reason; that the number of independent jurors in a county is a fixed quantity, which will always find itself upon any jury list, and, that of course, as you enlarge the jury list, so you reduce the probability of those independent jurors being called upon the panel.

278. I understood you to say that the larger the list the less would it be in the power of any person to challenge those independent jurymen whose verdict would, of course, be of use?
Yes, but then the larger the jury list the smaller the proportion of independent jurors upon the panel; that is to say, if there are 200 out of 1,600, then you have 1 in 8; but if the whole jury list is enlarged downwards to 3,200, you have only 1 in 16.

279. Then, you would, in fact, be in favour of increasing the qualification, and so reducing the number on the list altogether?
Yes, I should prefer increasing the qualification simply with that view. That, to my mind, is the only element of sufficient stability in the juries at present. I do not think that the juror who is rated at 14 *l.*, is a better juror than the man who is rated at 8 *l.*

280. *Chairman.*] From what class, generally, are the petty juries drawn now?
From the class of farmers and shopkeepers.

281. And, I suppose, the shopkeepers, generally, are of a class very closely identified in interest with the agricultural class?
Closely. Almost all the country shopkeepers are small farmers as well

282. I dare say you can tell us where we can get information with regard to the fines which have been imposed upon jurors for non-attendance?
From the officers of the clerks of the peace.

283. Duke of *Marlborough.*] Would it be possible to get a return of the number of cases where acquittals have taken place, the result being an apparent miscarriage of justice?
You can get a return as to what acquittals have taken place, and you can get a return from the clerks of the peace of the proportion of acquittals to convictions; but there is no accurate return as to the cases in which there has been a miscarriage of justice, because it does not follow that in every case of acquittal there

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there has been a miscarriage of justice. You can get the number of acquittals, but that will not give the true result. If you take an ordinary English circuit you will find a certain proportion of acquittals, and very properly; and so, in Irish trials, there is a certain proportion of acquittals which are quite right.

284. Probably the proportion of acquittals would be larger in Ireland than in England?
I think that is probably so.

285. Lord *Ardilaun.*] Have you known any cases in which intimidation has been used by threatening letters being sent to jurors?
Yes.

286. Has it been done extensively in the district with which you are connected?
That I cannot say. The one or two cases that I do know have not occurred in the district.

287. But you think that there are many cases in which it occurs and in which the person threatened conceals the fact?
Yes.

288. *Lord President.*] Do you know of any case of violence against a juror for having done his duty?
I do know of such cases, but I cannot remember them particularly; I remember, broadly, some three or four cases where jurors were injured, but I have not the facts of the cases in my memory.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, Twelve o'clock.

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Die Martis, 21° Junii, 1881.

PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Emly.
Earl of Derby.	Lord Ardilaun.
Lord Tyrone.	

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. LEWIS MANSERGH BUCHANAN, is called in; and Examined, as follows:

289. *Chairman.*] I believe that you are Clerk of the Peace for the County of Tyrone?
I am.

290. How long have you held that office?
I was appointed deputy clerk of the peace in 1861, and clerk of the peace in 1875; but during the entire time I have discharged all the duties both as deputy and as principal.

291. And you have also held the office of clerk of the Crown, I believe?
Yes; when Mr. Fitzgerald was clerk of the Crown he asked me to act as his deputy, and I did so for seven years, during which time I did all the duties of clerk of the Crown; those seven years were from 1865 to 1873.

292. Therefore you have had considerable opportunities of watching the operation of the Irish Jury Laws under the former as well as under the present system?
I believe so.

293. Will you tell the Committee what are the opportunities which are enjoyed by the clerk of the peace; how does he come in contact with the question?
The clerk of the peace and the clerk of the Crown have opportunities of seeing the class of men that the jurors are; they can form an opinion as to their intelligence, and also a very accurate opinion as to the mode of procedure of the Juries Acts, both before their reform and since.

294. Have you not also held the appointment of baronial constable?
Yes, I have been baronial constable for two baronies of Tyrone since 1861 also.

295. And in that capacity you had the preparation of the jurors' list for those baronies?
Prior to the reform of the Jury Acts, it was the duty of the baronial constable to prepare the lists for his baronies of those who were legally qualified to serve on juries. They were submitted to the revision sessions along with those prepared by the other baronial constables of the county, and there supposed to be revised; and from those revised lists the general list of the jurors of the country was made prior to the Act of 1871.

 296. Would

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296. Would you state to the Committee your opinion of the jurors who used to serve under the old Act, before the Act of 1871?

They were extremely good jurors. They had a great deal of experience; the numbers were few, and, therefore, their times of serving were much more frequent. There is no doubt that they were excellent jurors, but owing to the necessary leasehold and freehold qualification having become almost obsolete in Tyrone, half of them were not legally qualified.

297. Therefore, in point of fact, you were obliged to have recourse to the services of persons who were not legally qualified to act as jurors?

I did, regarding my barony, what I believe almost every other baronial constable did with regard to his, that is to say, finding that the legally qualified persons were altogether too few, he travelled out of the precept and selected from the list of the highest cesspayers the men who appeared from their rating to be most competent.

298 Earl of *Derby.*] Was that according to law?

No, but it was necessary in order to provide a sufficient list.

299. Then we may take it, I suppose, from what you say, that the system which existed previously to the Act of 1871 had broken down?

It was a make shift to the extent I have stated.

300. *Chairman.*] Then passing to the change introduced by the Act of 1871, would you state to the Committee what class of jurors served under the new legal qualification?

The qualification enacted by the Act of 1871 was so low, that it provided an entirely superfluous number of jurors, and they had no knowledge whatever of their duties. The qualification went to a stratum below what was necessary, and it brought into court men who really did not know what they were brought there for, and were quite incapable of discharging their duties as jurors; for instance, in Tyrone there were 3,092, as nearly as I can recollect, and if they had been taken in rotation they would not have been summoned, except where they were special jurors, more frequently than once in five or six years.

301. Then, according to your opinion, the Act of 1871 was clearly a step in the right direction, but you think that it rather overshot the mark?

I believe it was absolutely necessary, but that the qualification was made too low.

302. And the short comings of the jurors who came in under the Act of 1871, led to the amending Acts of 1876?

First, in 1873, there was a temporary amending Act.

303. I will pass that by; but the Act was made permanent in 1876?

Yes. Then there were other changes made in 1876, which have resulted in the present Acts.

304. The principal feature of the Act 1876 was the raising of the rating qualification, was it not?

The raising of the rating qualification and the adoption of the principle of ballot, in criminal cases which was not in the prior Acts. I think that in 26 out of the 32 counties the rating qualification was almost, if not quite doubled.

305. Did that change in the rating qualification lead to the exclusion of those incompetent jurors to whom you referred just now?

I think it led to the exclusion of incompetent jurors to as great an extent as almost any step that could be taken would lead to their exclusion. No matter what system you adopt, some men will be found upon the jury list who are incompetent; but probably there are as few under the present system as under any other system that could be devised; at all events that has been our experience in Tyrone.

306. But putting aside exceptions, you think that the stratum of jurors of a 40 *l.* rating qualification is markedly different from the stratum at 20 *l*?

Markedly; it omitted the incompetent jurors almost entirely.

307. That

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307. That is your observation, founded upon your experience within a limited part of the country?
Yes, principally within the county of Tyrone.

308. I believe that you are prepared to supply the Committee with some returns bearing upon the operation of these Acts?
I had formed a very favourable opinion of the working of the Acts, and when it was intimated to me that I was to be examined here, I took, at random, the working of the Acts in the five last years of the old Act, that is to say, prior to 1870, and in the five years that have just passed; and I have a return for the five years ending the 31st December 1870, and the five years ending the 31st December 1880, of the number of criminal cases disposed of at quarter sessions in the county of Tyrone, and the result in each case.

309. Will you state what these returns point to?
I do not wish to draw an absolutely decided opinion from them; but I think they go to show, to a very large degree, that the jurors under the new system have been extremely efficient in the county of Tyrone.

310. What is the test of efficiency which you adopt in these returns?
In the five years ending the 31st December 1870, there were 609 criminal cases tried. Out of those 609, 137 pleaded guilty; that does not affect the question very much; but 122 were tried and found guilty, and 157 were acquitted by the jurors under the old system, and in 23 cases the juries disagreed. Then in the five years ending the 31st December 1880, there were 635 cases tried at quarter sessions, about 25 more than there were in the previous five years. Out of that 635, 169 pleaded guilty, which I need not take into account; but 189 were found guilty on trial, and only 144 were found not guilty; and there were only four disagreements during the five years. I find, upon taking the per-centage, that upon the return for the five years ending the 31st December 1870, the per-centage of convictions was 42; for the five last years it was 57; and the per-centage of acquittals, including the disagreements of the jury, was 57 for the first five years, and only 43 for the last five years. I think that that, taken together with my own knowledge of what I have seen of the jurors in court, supports the view that I have, that they have endeavoured to do their duty with the most perfect desire to do it properly and loyally.

311. The comparison which you have just instituted places in contrast the period ending at the present time with the period ending in the year 1870, therefore, that is a comparison of the operation of the old Statutes, and the Statutes as amended in 1876?
Yes.

312. You have no means of comparing the state of things which has arisen under the amending Statutes, with the state of things which arose under the Act of 1871; there is an intermediate period of about five years, which is not touched by that comparison of yours?
It is not; but, so far as my recollection serves me, the Act was amended so speedily after it came into operation, that I do not think there was very much failure in that time; in fact, the Act was only in operation, I think, two quarter sessions. I do not at all say that this satisfactory result is to be entirely attributed to the jurors; I think that the judge has a good deal to do with it; but I think it shows whether they were anxious to pay attention to the charge of the judge, or not. At all events, it shows that they were anxious to do their duty, and that they succeeded in doing it, no matter how they reached it.

313. The old system under which the juries were to a great extent selected by the sheriff was, I believe, also a good deal criticised, upon the ground that his selection was open to a certain amount of suspicion of unfairness?
It was objected to upon the grounds that it was open to suspicion, and that the sheriff had it in his power, if he chose to exercise the powers, to frustrate the administration of justice.

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314. In your opinion, had that suspicion much foundation in fact?
I cannot say that it bad; I should be sorry to make any statement that would reflect in the least degree upon a body of officials who are perfectly beyond suspicion; but I think that the system was so bad that it probably infected the whole administration of justice, more or less, and beyond doubt a a very large class of the people believed that, in political cases and party cases, it was unfair.

315. Within your own experience did cases arise in which there was a strong public feeling in that direction?
More or less it was frequently cropping up. I never knew a sheriff to transgress his strict duty with any intention of doing what was wrong or corrupt; but large numbers of the people were without confidence, and the expression of that want of confidence was constantly taking place when cases of a political or a party nature were tried. There was one example which was made the subject of a judicial inquiry, and possibly I might mention it. In 1864 the sub-sheriff of the county of Tyrone thought that he would make the selection of the jury lists better than it had been before, and he put on a Roman Catholic and a Protestant alternately. He was certainly supported by the opinion of his co-religionists in the county, and it was not done with any corrupt motive.

316. The proportion was, I presume, not a reasonable proportion?
I think he put on almost every Catholic on the list; he must have done so in order to get 50 at that time. He summoned a panel, so far as I recollect, of 100 names, and he had a Roman Catholic and a Protestant alternately, and he openly stated that he did it, because he thought it was the fair and proper thing to do, and that the panels before that time contained so many Protestants that his co-religionists had no confidence in them. I do not think there was any ground for saying that they were deserving of want of confidence; but still people believed that they might have acted unfairly to them, and no matter how just the verdict was, it did not carry the weight which it ought to have carried.

317. With regard to the class of jurors that now come on to the panel, may I take it that you are satisfied with their competence?
I am, decidedly.

318. That they are intelligent and independent?
I have never seen the slightest want of independence.

319. What class do they usually belong to?
They belong to the better class of farmers. A rating of 40 *l.* a year in Ireland is a very high rating; it means that possibly the rent averages about 50 *l.* a year.

320. *Lord Privy Seal.*] It would not be higher than that?
As a rule, I think, not in Tyrone; there are many estates in Tyrone that are let at Griffiths' valuation.

321. *Chairman.*] I suppose that any attempt to raise the legal qualification would very seriously limit the number of persons available for service on the jury?
The raising of the qualification from 20 *l.* to 40 *l.* took just half the list away.

322. But supposing that it was raised from 40 *l.* to 50 *l.*, or from 40 *l.* to 60 *l.*, would that seriously limit the numbers?
It would very seriously limit the numbers, and it would result in another condition of things which I think could not be attempted in Tyrone. that is to say, it would eliminate almost every Catholic from the jury list. If I might explain myself, there are, upon the special list where the qualification is 70 *l.*, but 31 Catholics out of a list of 360. I have the list, and I have taken the numbers from it, as I know them all very well.

323. The district with which you are connected, I take it, has been a pretty quiet one, has it not?
Very quiet.

324. There

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324. There has not been any general public excitement?
None, comparatively speaking.

325. Has there been any extensive land league organisation in that district?
Not extensive; but it would not be right to say that great numbers of the people were not very strongly infected with land league principles. At the same time I think the great majority of them are anxious to wait for the result of legislation before taking any step in the direction of public agitation.

326. But there has not been anything like general terrorism in that district?
Nothing.

327. You are no doubt aware that in some parts of the country it has been represented that it is almost impossible for jurors to do their duty fearlessly, owing to external pressure?
So I have heard.

328. But that is not a matter which has come within your own personal knowledge?
It has not taken place in Tyrone.

329. With regard to the mode in which the panel is formed, the present system is one of strict alphabetical rotation, is it not?
Yes.

330. Does that rotation work satisfactorily?
So far as regards the administration of justice, it works as satisfactorily as can reasonably be expected; but I think that by adhering to the alphabetical arrangement, and by modifying the method of summoning the jurors, less hardship might probably be inflicted upon jurors of the same name or connection; for instance, members of the same firm or family.

331. But, looking to the distribution of the burden of service, you think that, in some cases, it does not operate fairly?
I have heard but few complaints except of two or three members of a firm, or two or three members of a family, or men who are connected in business, being summoned at the same time to attend upon juries. That might be remedied easily enough.

332. How would you remedy that?
Perhaps your Lordships will permit me to illustrate the method by showing you the book (*producing a book*). I think it would be preferable, instead of selecting one from each letter, to have them arranged as they are in this book, and I believe it is the form that is general throughout Ireland. There are 27 names upon the list on each page. I think it would be simpler for the sheriff, and it would remove almost the slightest chance of two members of the same family, or two members of the same firm, being summoned at the same time, if the lists were continued to be made out exactly as they are at present, but divided into pages, and that the sheriff, in summoning the jury, should take one name from the top of one page, one from the top of the next page, and so on to the last page, and then begin again. The present form would exactly suit this proposal, and would divide the jury list into pages of 25 each. There would not be much chance of two members of the same firm, certainly not of the same name, being summoned at the same time, because there is only one name upon the whole list which extends to a page.

333. The difficulty, I imagine, now arises from the fact that you have a small number of names under one letter, and a large number of names under another, and that, consequently, when you begin you take one name under each letter, and go through the letters, you exhaust some letters very rapidly, and then the residue are all of those letters which happens to be most numerously represented on the list, and which are consequently the last to become exhausted?
Yes; there was an example of that at the last quarter sessions, and I brought the papers connected with that particular case to show to your Lordships, where, as was to be expected, they all were taken from the letter M. The jurors at the April quarter sessions were taken exclusively from the letter M, and they were almost exclusively Catholics.

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334. *Lord Privy Seal.*] Were there no O's among them?
No, the O's are not very numerous in Tyrone; but taking one from every letter, of course the letter in which the fewest number of names occur will be exhausted first, and in proportion as the number of names is great, it will last the longer, and the jury will be composed exclusively of names beginning with the letter which has the greatest number of names, as happened at the last April sessions, when all the jurors were Macs, and 10 out of 12 were Catholics; and it so happened that there was an agrarian case among others tried by them, and they found the prisoners guilty. The remark was made in Court that we had found what had never happened before in Tyrone, a body of jurors, almost exclusively Catholic; they discharged their duties most satisfactorily.

335. *Lord President.*] There was no complaint about their being of one sect?
None whatever.

336. *Chairman.*] Under the Qualification Act of 1876, there is not only a rating qualification, but I think a freehold and leasehold qualification, and there are also certain special qualifications which were devised, I take it, with the idea that under them you would get upon the jury persons of, perhaps, rather better position and higher intelligence than the ordinary run of jurors?
Yes.

337. Is it your experience that that class of persons does habitually serve on petty juries?
There are not very many of them in Tyrone; Tyrone is an almost exclusively agricultural county; the towns are small, and those special qualifications do not exist very numerously.

338. But I suppose there are some?
There are some.

339. Is that small minority to be found occasionally represented on the jury?
Yes, there are some of them, but they do not like to serve; they are constantly making applications, and endeavouring to get off.

340. We have been told that in some parts of Ireland service on a jury is very distasteful to such persons, and that sooner than undergo it, they will submit to the risk of a fine; is that the result of your observation?
I think that my experience perhaps bears that out; for I believe that the largest number of fines has been levied off this class off jurors, men who were qualified as special jurors, rather above the class of men that they would meet in a jury box; and sooner than sit on the jury they do not attend the quarter sessions at all, and submit to be fined; I cannot say that that was the reason, but certainly it is my recollection, that most of the men upon whom I have served notice of fine have been of the better class.

341. Earl of *Derby.*] What is the fine?
Two pounds, which is not discretionary.

342. *Chairman.*] It begins with 2 *l.*, does it not, and the fine rises each time the list is gone through?
The attendance is extremely good. For instance, at the last quarter sessions there was only one juror fined for non-attendance out of a list of 50 jurors. Every one of them attended or sent a medical certificate.

343. Lord *Inchiquin.*] Was that man who was fined of the better class?
No, he was an ordinary farmer. Probably when he gets the notice, and comes in at the next quarter sessions, we shall find that he was absent in England; he might have been a cow-dealer or a horse-dealer; he will make some excuse, and if it is valid he will get off; but the chairman holds them very strictly, and the result is that the attendance is extremely good, as your Lordships will see if you like to look at these lists. It is a great advantage now that the

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the people have begun to know that it does not lie with the court to fine or not fine them, hut that they are fined under tbe Act if tbey do not attend.

344. *Chairman.*] The fine, I suppose, would have greater terror for the ordinary class of juror than for those of a rather higher class?
It is a serious matter to the ordinary class, but not to the others.

345. Is it within your experience that the right of challenge in criminal cases, now conceded, on the one hand to the prosecution, and on the other to the defence, is abused on either side?
My experience is not so at quarter sessions. I have heard complaints about it elsewhere, but I have never seen the slightest approach to any abuse of it at quarter sessions.

346. The prisoner is allowed 20 peremptory challenges, is he not?
Yes, 20 in cases of felony. He is allowed six in cases of misdemeanor, which the Act of 1866 has provided for him. Prior to that he was not allowed any challenge in cases of misdemeanor. I was examined in 1873, and I recommended very strongly that there should be a challenge in cases of misdemeanor.

347. Is it usual for the prisoner's counsel to challenge the better class of juror as distinguished from those of a rather inferior class?
Tbe prisoner's counsel's right to challenge is seldom exercised in Tyrone, but when it is exercised his endeavour is to get into the jury box jurors who he might imagine to have sympathy with tbe prisoner, so as, if possible, to split tbe jury.

348. If there is only a small number of the more independent and higher class jurors on the panel. the counsel for the defence, by exercising this right of peremptory challenge, would be able to keep that class of juror out of the box altogether, would be not?
To a certain extent he would, no doubt; but as this return shows, the number of cases of disagreement of juries has been extremely small; and the convictions large.

349. I am not speaking now of the question of disagreement in the jury hox, but of the exercise of the right of challenge before the jury is actually formed. It has been stated to the Committee that one effect of allowing the prisoner to challenge peremptorily 20 names when the jury is formed, is to enable the defence to keep out of tbe jury hox that small minority of bigher class jurors of whom we were speaking just now; and my question was whether, within your experience, that had been tbe case?
I think that it has that effect to a certain extent, but I should not say that it had been very successful. I was of opinion before that the right of challenging 12 would be sufficient; I think so still, but from my experience I should be slow to recommend any fundamental change in the constitution of the juries, or in the prisoner's right of challenge. I did recommend it in 1873, hut tbe present system has worked so satisfactorily that I should be slow to recommend it, except it was found absolutely necessary to do so.

350. *Lord President.*] I understand that, on thé whole, in the County Tyrone you are satisfied with the present system of juries?
I might say that I am perfectly satisfied; I would scarcely qualify it.

351. In that period which you named, tbat is to say, the five years up to 1870, can you classify the cases where justice was not perhaps obtained?
No; it would be necessary for me to have the Crown book to know the particular class of cases; but, according to my recollection, they were the same sort of cases as the others.

352. We heard the other day that in some parts of Ireland the juries broke down in almost all cases of violence; were those cases the ones in whicb tbere was difficulty before in Tyrone?
I think not.

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353. The difficulty in Tyrone would probably be a religious one?
Most genrally, but party spirit is quieting down very considerably; it is not existing to the same extent that it did, and I think that this Act has had a great deal to say to that.

354 It removed the feeling that existed among a certain class of people that the juries were selected partially?
They believed that; I do not say that they had any foundation for their belief, but they believed it, and the administration of justice was tainted in their eyes accordingly.

355. And there was no particular class of case more than another that you can specify in which the jury system broke down in former days?
It certainly did not break down; the administration of justice was carried on fairly well, but there was a great deal of animadversion by one class, the people of the Catholic religion in the county, who could scarcely be persuaded that the sheriff, having the right of selection and differing from them in religion and politics, did not exercise the right of selection; he did not do so as a matter of fact, but they believed that he did.

356. Even before the Act of 1871 was amended, in that intermediate stage to which Lord Lansdowne referred, between the old law and the amended Act, there were rather remarkable cases in Tyrone where juries found a prisoner guilty, were there not?
The Montgomery trial, to which I understand your Lordship to refer, took place in that interval, and, curious to say, the jury disagreed both times by a majority of 11 to 1, and those men who split the jury are still jurors.

357. Was the case tried three times then?
It was tried three times.

358. And the last time they found a verdict of guilty?
The temporary Act of 1873 was passed, expunging from the jurors' book every man whose qualification was under 30 *l.*, that is to say, expunging the qualifications between 20 *l.* and 30 *l.*; and from that amended list a jury was formed, and it so happened that they found a verdict of guilty; they were a very respectable jury.

359. The third jury was formed on a different panel from the two former ones?
It was the very first instance of the new panel being resorted to in Tyrone, that is to say, the new panel formed by the Act of 1873 amending temporarily the Act of 1871.

360. Then were the two first juries incompetent juries, or were they influenced by any particular motives?
It so happened that the men who disagreed with their fellows upon that jury were men who are still upon the jury list, and who probably under any circumstances would find their way on to the jury list.

361. That was a case in which there was no great feeling one way or the other, and probably the feeling might be rather against the prisoner, if anything?
There was no very great feeling.

362. With regard to the rotation of juries, on which we had some evidence the other day, in taking the alphabetical list, are the names taken in absolute alphabetical order; for instance, is "Ra" taken before "Ro," or is it left rather to the discretion of the sheriff?
The sheriff, as I understand it, is bound to take them as they come. For instance, he is bound to summon the first of letter A, and then to turn round to the first of letter B, and then to the first of letter C, and so on to the end of the alphabet, and then back to A again.

363. But would he take "Ra" before "Ro"?
Naturally "Ra" would come before "Ro." The names of the jurymen must be entered in alphabetical order. They are not in dictionary order under the new Act.

364. *Lord*

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364. *Lord Privy Seal.*] But are the second and subsequent letters after the initial letter attended to in framing the list?

Yes, they certainly are in my list, and I think in every other; these books will show that.

365. *Lord President.*] But you would so interpret the Act that the man who puts down the first list would be bound to put down a name beginning with "Ra" before a name beginning with "Ro" or "Ry"?

Most certainly, otherwise he would have a discretion which would defeat the object of the Act. It is absolutely essential, particularly in a county like Tyrone, where the Roman Catholic jurors are few in number, and the population the most numerous, that no one should have the slightest discretion, but that it should be a purely mechanical operation.

366. Earl of *Derby.*] Do I correctly understand that he has absolutely no power to put anyone on, or to take anyone off?

I believe he has no such power.

367. *Lord President.*] Except an illiterate person who cannot read and write?

He is not supposed to be on the list, because all such names are supposed to have been expunged at the revision sessions. I have got the result of the last revision, and I find that the general list of jurors sent in by the clerks of the unions contained 2,867 names, and we expunged 882 from that list.

368. Lord *Inchiquin.*] As illiterate?

As over age, illiterate, imbecile, having left the country, or otherwise disqualified under the Act.

369. *Lord President.*] Can you state how many of those could not read and write?

I find there is not a column here for the illiterate, but they are comparatively few.

370. *Chairman.*] These lists are prepared in the first instance, are they not, by the poor rate collectors and union clerks?

By the clerk of the union, who summons the poor rate collectors to attend and go over the list with him. The clerk of the union takes the names from the rate books. As soon as he has made his list he gets the poor rate collectors, and they go over them together; and, from their knowledge, they mark whatever disqualification there may be to a man, and for what reason he is disqualified.

371. Do those officers get a small fee for each name sent in?

I have not got the Order in Council here, which refers to the clerk of the unions, but they are paid according to the number of names, according to a scale which was settled under the Act of 1876. The poor rate collectors are paid by the grand jury a small sum for their trouble in the matter.

372. But, at any rate, it would be the interest of both those officials to put as many names on the list as possible?

They are not supposed to exercise any discretion. They are paid for the names which appear qualified upon the rate book; they have no option. When they put down a name they must put the man's qualification after it, and his qualification is their justification for putting the name there at all; but they must return year after year, no matter how often a man has been disqualified, or what age he is, the name of any person appearing qualified in their rate books; and if they know that a man has been struck off before, they refer to the last list, and put the cause of the prior exemption, or any that they are in doubt about, who have become of the age of 65 in the intervening time. I think the lists are very well revised now.

373. *Lord Privy Seal.*] Can you state what proportion the Roman Catholics bear to the Protestants upon the jury list in Tyrone?

I can. There are 413 Catholics; there may be 405 or 420, but certainly it does not go beyond that. I make it 413 Catholics, and 1,580 Protestants upon the general jurors' book.

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374. *Lord President.*] As a rule, do the Roman Catholics hold small holdings in the county?
Yes.

375. There are very few rich people amongst them?
Comparatively few; and, as a test of that, I went over the special jurors' book, in which there are only 31 Catholics out of 357 jurors.

376. Are the Roman Catholics scattered in the county, or are they found principally in certain districts?
The majority are found in the mountain districts. Out of 413 Catholics who are upon the general jurors' list of Tyrone, there are very nearly half, 182, in the letter M; a letter I find, proportionately, more frequently in those districts; but they are just as good as any other jurors.

377. *Lord Privy Seal.*] Are they found principally in the more mountainous part of the county?
I should certainly say so from what I know of the county.

378. Do you think that, under the present absolutely impartial system of framing the panel, the right of peremptory challenge is necessary?
There cannot be a question that is not so necessary as it was, but it is a very ancient right. I do not know that the taking away of the right of challenge would result in unjustice, The law would be, on the whole, more adverse to the prisoner under such a system.

379. It is a very ancient right no doubt; but do you think it is fairly necessary to the prisoner that he should possess the right?
As to the fairness of the trial, I do not think that it is absolutely necessary to a fair trial; but if you curtail the right of the prisoner, I think you should curtail the right of the Crown.

380. Do you think it is necessary for the Crown?
In some cases it is; I think, for instance, in the case of Montgomery, if it had not been resorted to, to a very large extent, we should have had no verdict.

381. Lord *Inchiquin.*] There might be a man summoned who had some special prejudice against the prisoner?
There might, and it would be a serious thing for the prisoner to find that man in the box without any power to put him out of it.

382. Lord *Tyrone.*] There might be a relative of the prisoner summoned?
That would be equally serious for the Crown. It is obviously to provide for these cases that the right of challenge is necessary, and should be retained to a certain extent.

383. Earl of *Derby.*] At the same time, any accident of that kind might be guarded against by allowing a much smaller number of peremptory challenges than at present?
Certainly.

384. *Lord Privy Seal.*] You think there might be personal causes affecting a particular juror which could hardly be stated as reasons, but which yet ought to exclude him from trying a particular prisoner?
A man who wished to convict a prisoner, or to acquit him, could almost force his way upon the jury if he were summoned. He could answer to his name the first time, and run a very great chance of being called upon the jury; whereas the Crown knowing that, and having the right of challenge, could put him off it. On the other hand, there might possibly be a man who was anxious to convict the prisoner, to revenge himself upon the prisoner or his family, and he might find his way into the box in spite of the prisoner, if the prisoner had not the right of challenge; therefore I think it would be dangerous to take away the entire right of challenge; but I have never seen it resorted to to the full extent, except once or twice.

385. *Lord*

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385. *Lord President.*] Are you speaking of taking away the peremptory challenge, or all challenge?
The challenge for cause has never been resorted to in my experience.

386. But would it give a sufficient protection against an improper juror if the challenge for cause were left, without the peremptory challenge?
I think it would. It would be necessary for him to state his reasons, in a challenge for cause, and those reasons would have to be submitted to the court. It would increase the difficulties of the prisoner very much not to have a peremptory challenge, to some extent, at all events. He might have probably a perfectly *bonâ fide* reason in his own mind for believing that a man who got into the box intended to convict him, or was prejudiced, and yet it would be very difficult to prove that reason, or to convince the court that it was a valid reason.

387. *Lord Privy Seal.*] Is it not the case that challenge for cause can only be exercised by the appointment of special tryers?
Yes.

388. Do you think that it would be possible to allow challenge for cause given to be exercised at the discretion of the judge, without that process of the appointment of tryers?
I think it would be very much better, if there was any alteration made, that it should be at the discretion of the judge.

389. But, upon the whole, I understand your evidence is, that the present jury laws are so sound that you do not desire to see any substantial change?
I do not desire to see any interference whatever with the principle.

390. But you confine that evidence to the county of Tyrone; is that so?
I confine my evidence principally to the county of Tyrone; but I have a general knowledge of the rest of Ulster from my intercourse with other officials, and I believe that their opinions coincide, to a very great degree, with mine.

391. You would apply that view to Ulster generally?
I believe so.

392. Do you know anything of the south and west of Ireland?
Nothing, personally.

393. Lord *Inchiquin.*] You would not extend it to the other parts of Ireland; you do not think that it would be advisable to leave the present jury system, as it is with regard to Munster, for instance, or Connaught?
It depends upon the extent to which these failures of justice have gone. I am very much afraid that any interference with the present jury system would probably lead to additional feelings of injustice.

394. But you know very little about it in any other provinces?
Nothing, personally.

395. Has there been any break down of justice at all in Tyrone, as far as your knowledge is concerned?
Not attributable to the juries, certainly.

396. Have the judges made any remark upon the subject?
No, they have not. The juries are, perhaps, rather slower in coming to their decisions from want of practice; but now that we have got through the jury list a couple of times, they are beginning to know their duties, and to become naturally more intelligent in discharging them.

397. Earl of *Derby.*] Have you considered at all the question of requiring unanimity from a jury?
I have considered it. I should be slow to interfere in a way which would be rather a fundamental change, unless there were very good reasons for it; but I think if, for instance, there was a jury of 15, and 12 men should give a verdict, probably it would leave room for the men who found themselves, in spite of the Crown, or in spite of the prisoner, upon the jury, and ought not to be there.

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398. You have not known, you say, many instances of failure of justice within your own experience?
No.

399. Therefore, the abuse not existing, you are not prepared to suggest a remedy?
I am not prepared to prescribe a remedy for a state of things of which I have not personal experience, but besides the question of unanimity, I think a more general resort in certain cases to change of venue, so as to take them outside the influence of local terrorism or sympathy, might be effective.

400. Lord *Inchiquin.*] If you had a jury of 15, would you recommend that the vote should be taken by ballot in the jury box?
I think it would be better for them to discuss it as they do at present. It would require a very intelligent foreman. If there was a ballot without independent supervision of any kind. They might discuss it in the room, and deliver their verdict individually, by ballot, in court.

401. There would be nothing to prevent the discussion, and the ballot would take place when it came to the decision; you say that if there was a jury of 15, 12 should be for conviction?
I do not say that I should recommend any alteration, but if it were necessary that the principle of unanimity should be in any way modified, I should certainly not have less than 12 to convict.

402. In that case would it not be most advisable that the vote should be taken by ballot?
I think it would be, if sufficient safeguards could be devised.

403. Otherwise it would be very unpleasant for those who were for conviction, and those who were not?
Yes.

The Witness is directed to withdraw.

Mr THOMAS EDMONDSON is called in; and Examined, as follows:

404. *Chairman.*] You are, I believe, Honorary Secretary of the Dublin Jurors' Association?
I am.

405. Would you tell the Committee what that association is?
It is an association composed of about 500 of the jurors of the City of Dublin, without any regard to politics or religion, simply for attending to the interests of the jurors, as jurors, to see that they are not wrongfully summoned, and to suggest any amendments in the law which may occur to us from time to time in the course of our experience.

406. Then the association, I presume, makes it its business to watch the operation of the different Acts, rather as they affect the interests and convenience of the jurors, than as they affect the interests of justice?
Primarily, of course, to watch the interests of our own members.

407. How long has the association been in existence?
Since 1875.

408. Therefore, your official experience of the jury laws does not extend to their operation previously to what is known as Lord O'Hagan's Act?
No.

409. Am I right in believing that the qualification for petty jurors in Dublin was unchanged by the legislation of 1876?
I believe it was unchanged.

410. May I ask you from what class in life are the petty jurors generally drawn?
Principally from the class of small shopkeepers.

411. Does

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411. Does the class of jurors, which is rather pointed to by the 2nd Section of the Qualification Act of 1876, that is to say, jurors with special qualifications, quais-official qualifications, leaseholders, members of public boards, commissioners, and so forth, habitually serve on Dublin juries.

I do not think they evade the duty more than any other class of special jurors.

412. They take their share of the service on the juries?

I think so, because they are very frequently on the jury list independently of such qualification. If they are not on the special list, independently of that qualification, they simply rank as petty jurors, as common jurors, which our association think was perhaps an oversight in the framing of the Act.

413. That is to say, if I understand you aright, they would be returned under their rating qualification and not distinguished from the ordinary run of jurors?

If a gentleman, who is a member of a public board or a public company, and is thereby qualified to serve as a juror under that particular section, has no rating of his own in the City to qualify him as a special juror, the Act puts him on as a petty juror; and in that way I think some of these jurors have rather objected to serve, because they thought they should have been put upon the special list.

414. Have you considered the operation of the Procedure Act of 1876?

We have from time to time had various portions of it under our consideration.

415. Have you considered the operation of that part of the Act which requires an alphabetical rotation to be observed for service on the jury?

That is in the original Act of 1871.

416. Is your association content with the operation of that Act in this respect?

Yes.

417. And you have no suggestion to make for a more even distribution of the burden of service on the jury?

Not in any respect as regards the alphabetical rotation.

418. Have you any suggestions to make upon any other point?

If I rightly understand your Lordship to mean in relation to the alphabetical method of selection, I do not think we have any fault to find with that at all in any respect.

419. Have you any suggestions to make upon any other point arising out of the operation of these Acts?

There is the one to which I have already alluded which affects directly the public companies. We think that they should be placed upon the special instead of the petty panel. We find in Dublin where there is such a large constituency, that from the number of deaths and removals which occur during the year, the lists become very imperfect before the close of the year; and we have several times recommended that, instead of the present annual revision of the lists, there should be a quarterly revision. There is power at present under one of the Acts for any judge to correct the jury books at any time that they may be proved to be in error. Under that provision we applied to the Recorder of the City of Dublin, and he held a special interim sitting at our instigation, a few weeks ago, and a large number of errors were then corrected which would otherwise have been carried on throughout the year. We, therefore, think that a more frequent revision should take place, especially in Dublin where the services of jurors are so frequently called for, owing to the large amount of country cases which come up to Dublin to be tried.

420. Has your attention been directed to the consequences resulting from the right of peremptory challenge given to the prisoners in criminal cases?

I do not think we have had that under our consideration at all.

 421. Is

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421. Is there any other point upon which the association have any suggestions to make to the Committee?

There was a memorial which we drew up embodying all the points that we thought needed attention, and which was presented to the late Chief Secretary for Ireland, the Right Honourable Mr. Lowther. We have copies of it here, which I can leave with you for your perusal. Remuneration of jurors is a point to which we have given a good deal of attention. There is a very considerable feeling in the City of Dublin where so many cases (some of them very prolonged, and requiring a good deal of attention) come up from the country to be tried, that it is not fair to the jurors of the City of Dublin that they should be asked to sit for three, four, five, or six days, to try a quarrel arising, it may be, in the County of Tyrone, or in the County Kerry, without some more adequate remuneration than they at present receive.

422. What is the present remuneration?

A guinea per case to each juror in special cases, and a guinea per case for the whole jury in petty juries, that is 1 *s.* 9 *d.* per juryman.

423. And the association submits that that is an inadequate remuneration, and they would like to see the scale increased?

We should; our idea is that we should like to see a guinea per day paid to special jurors, and perhaps half a guinea or 5 *s.* per day to petty jurors as remuneration.

424. What is the rule with regard to remuneration of jurors in the counties; do petty jurors get any remuneration?

Precisely the same as I have already stated in the case of the city, 1 *s.* 9 *d.* per case if they agree to a verdict; if there is no agreement there is no payment.

425. Earl of *Derby.*] If a case lasts more than one day does that make no difference?

No difference at all.

426. Lord *Inchiquin.*] Do you know what the pay in England is?

I think it is the same; we are informed that in the City of London at any rate, which I suppose rules the rest of the country, it is a guinea per case, and 8 *d.* per case, respectively, for special and petty jurors.

427. *Lord President.*] Is there also the same difference making it dependent upon agreement?

I believe it is the same, but I am not sure about that; I am not familiar with the English jury system.

428. *Chairman.*] Then I gather that the association recommends a more frequent revision of the lists, and also that the question of the remuneration of jurors be considered?

Yes.

429. Are there any further recommendations that you wish to lay before us?

We think, further, that to reduce the excessive service in our own city, which of course is what we give chief attention to, there would be no objection on the part of the suitors in civil cases to reduce the number of the jury from 12 to six. We have given a great deal of consideration to that, and we think that just as good and reliable verdicts would be obtained in civil cases by allowing the same privilege to the suitor of asking for a jury of six, that is now accorded of allowing him to ask for a special jury in place of a petty jury. There are at present in Ireland juries of six, what are called Master's juries, in courts for the assessing of damages in which judgment has gone by default; and we never heard any objection raised to the verdicts of those juries, but quite the contrary.

430. Have you any other recommendation to make?

There is a provision in the Fourth Section, sub-section 1 of the Juries Procedure Act of 1876, providing that the jurors who do not answer to their names

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names shall be re-summoned the next time that a jury is required. That was a point which was strongly put forward by our association before that Act was passed; and I think partly as the result of our action it was embodied in the Act. We found that there were some jurors in the city of Dublin who would rather run the risk of being fined than incur the loss of time that it involved to attend upon juries, some gentlemen to whom a 5 *l.*, or a 10 *l.*, or even 15 *l.*, or 20 *l.* fine was a trifle compared to what they valued their loss of time at. We thought that that was unfair to those jurors who did attend as a matter of duty, who wished to do their duty honestly; and, therefore, it was that we pressed this point of the re-summoning of those who did not answer to their names.

431. That is to say, they would be fined first for non-attendance, and then re-summoned for the next court?
Just so, so that the mere paying of the fine would not allow them to escape service.

432. Lord *Ardilaun.*] Was that embodied in the Act?
It was.

433. *Chairman.*] Then that is the present law?
That is the present law.

434. Lord *Inchiquin.*] Do you suggest any change?
The only change that we have to suggest in relation to that is that, instead of these names being mixed up with the rest of the panel, there should be an addendum at the foot of it, so that they would come regularly under the notice of the presiding judge, and he would then see those who were in the habit of shirking their duties as jurymen, and would bring them to account, if necessary. At present they are mixed up with the rest of the panel, and there is no means of identifying them without considerable inquiry. We recommend, further, the amalgamation of the county and the city jury lists in the case of Dublin, and probably in similar cases throughout the country. There was a provision to that effect introduced into one of the Bills a few years ago, but it was thrown out, I believe, in Committee; but we think it would save a large amount of inconvenience in the case of the city and county of Dublin, and would make the service much more equable than it is at present. The city of Dublin special juries have to attend now at least once per annum, and that service would be very considerably reduced if the two panels, the city and the county panels, were amalgamated. Then, again, a large number of those who reside in the county have places of business for which they are assessed in the city. Their names, therefore, appear primarily upon both jury lists, and there is a good deal of trouble in taking the course prescribed by law to get their names taken off the county list, which of course most of them do, not wishing to have double service. That would be all done away with if the county and the city jury lists were amalgamated.

435. *Chairman.*] Have you any other suggestion to make?
We think that the sheriff should be given such a position that he would take a real interest in the proper carrying out of the Jury Laws. At present the sheriff is only paid by the fees of his office; he gets, I believe, no remuneration for his attention to the carrying out of the Jury Acts; the consequence is that he can hardly be expected to give it the attention which such a subject really requires. We would propose that the sub-sheriff should be made a permanent officer of the court, and that the carrying out of the Jury Laws should be given to him under proper provisions in that respect.

436. But the sheriff's duties at present are almost mechanical, are they not?
They are; but if the sheriff was placed in the position which I have indicated, there are a good many ways in which he could interest himself in seeing that the lists were correct. For instance, he could bring up the books when he found that they were getting incorrect from deaths and removals; he would ascertain that by the summonses returned to him through the post office; and it

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it would be open to him then, if he desired to have his books correct, as any public officer should, to bring up these books and the amendments, and get any of the judges to make the necessary corrections; that would be another way of meeting the difficulties that we suggest in the case of holding quarterly revisions; it would help to the same end.

437. But the duty of revising the lists is already provided for, is it not?
Yes, but only once a year.

438. But I am speaking now, not of the frequency of the revision, but of the officials to whom the revision is entrusted?
There is no power of making any revision, except at the annual revision court or by special application to a judge. Any judge in any court, one of the Acts says, has power to revise any jury book that is proved to be incorrect; there is no other provision; then each of the judges thinks perhaps, naturally, that it is not his business to revise it.

439. Then are we to understand that, in your opinion, the lists are not only not revised often enough, but that when they are revised they are not effectually revised.
That has been our experience in the city of Dublin; we do not think that sufficient time is given to the matter at the annual revision; and, at the interim revision which I mention, which the Recorder of Dublin held, there were a number of errors corrected which we think should have been corrected in the revision court, but which were perhaps too much hurried over.

440. But you would leave the revision to the revision court, and then check it by, as it were, a further revision on the part of the sheriff?
I would leave the revision to the revision court as at present, but I would have it sit oftener.

441. But I understood you to suggest that the sheriff should have something to say to the more careful examination of the jurors' list?
If there were the quarterly revision court which we have suggested, the sheriff could then bring forward any errors that had come to his knowledge during the three months, and he would have an interest in doing so. At present there is no provision that the sheriff shall take any interest whatever in the matter. If he knows that a juror is dead, he has no legal power to avoid summoning him, and he must do so. For instance, there was a particular panel that our association took up and inquired into, a panel of 96 that was near the end of the list, and out of those 96 there were about 60 names, either dead, or removed, or unavailable from one cause or another; that we think would be prevented by this more frequent revision.

442. Are there any other points in your statement to which you wish to draw the attention of the Committee?
We had a conference with the Collector General of the city of Dublin, with whom rests the preparation of the city of Dublin jury lists for the revision court, and he made a suggestion which, perhaps, I may be allowed to put in here, as I do not know whether he will be called to give evidence or not. He suggested that a clause should be embodied in any future Bill providing for a preliminary summons to be issued a certain number of days before the jury was wanted; and then, that if it was found that a certain proportion of those were not available, there would be time then still to summon additional names. I might, perhaps, be allowed to put in this clause (*handing in the same*). Another point in our consideration of the subject, especially in a large constituency like that of Dublin, is, that there is no power to compel jurors, or those who are supposed to be qualified as such, to give the necessary information. We suggested (I think I gave it as evidence in the case of the Commission about the Collector General's Office in Dublin) that there should be a form left at every house for the occupier to fill up, stating his qualification, whether he is qualified as a juror or not, and that there should be a penalty attached to filling that up wrongfully. At present the Collector General finds it very difficult, and I suppose it is the same in other cases, really to find out whether people are

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are qualified or not. I know a case myself in which it was said by a firm in Dublin to some of their *employés*, "We cannot allow you to be attending as jurors, and losing your time in this way; you must disfranchise yourselves; you must enter your premises in the names of your wives, and then you will not be summoned as jurors;" and, of course, the inference was that the man would really lose his Parliamentary franchise also. We want to prevent any such evasion of service as that. The great object of our association has been to make all those serve who were legally entitled to do so, and to prevent anyone being unduly or unfairly summoned.

443. Are those points all remarked upon in the memorial of which you spoke?
I think they are, more or less fully. It is printed in an appendix to a copy of our report for 1878.

444. You spoke, a few moments ago, of the strain upon the Dublin jurors, owing to causes being removed from the country and tried in Dublin. I suppose that whenever the venue is changed from the provinces it is changed to Dublin, is it not?
Almost always. The working of the Judicature Act has been to increase the business in the city of Dublin.

445. Which of the Dublin courts tries a criminal case when the venue is changed?
The Court of Queen's Bench.

446. I daresay you have heard it said that in other parts of Ireland considerable intimidation has been exercised with the object of compelling juries to find a verdict inconsistent with the facts of the case; has it come to your knowledge that any Dublin jury has ever been intimidated in that way?
I do not remember that it has. There may have been jurors who have been afraid of such a thing happening, but I never heard of its being actually done.

447. My question was whether, within your knowledge, any attempt has been made to intimidate Dublin jurors in the exercise of their official duties?
I have no recollection.

448. Earl of *Derby.*] Are you aware of any case where, notoriously, a failure of justice has occurred, and where there has been reasonable ground for supposing that the jurors have been deterred from doing their duty from apprehension of the consequences to themselves?
I cannot say that I am.

449. *Lord President.*] You are only speaking now of the cases which have come under your notice since 1875?
Yes.

450. You are probably aware of other cases where certainly it was supposed that juries found a verdict against the evidence before them?
Of course I have heard of such cases, but I have no personal knowledge of them in Dublin.

451. Not in Dublin?
I cannot call such cases to mind.

452. Not within the last 10 years?
No.

453. You have stated, in the early part of your evidence, that some of those gentlemen who were summoned on a quasi-official qualification objected to serve on petty juries; could you state at more length why they do so?
I think they do not like the idea of being on the petty jury when they think that they ought to be on the special jury; I refer to merchants and gentlemen of position and influence in the city.

454. Is that on account of the men whom they meet on the petty jury, or on account of intimidation, or anything of that sort?

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It is simply on account of their meeting those whom they think they should not be required to sit in the box with. I think it is a natural feeling.

455. I am not saying that it is an unnatural feeling, but I only wanted to know the reason?
There is no other reason that I am aware of.

456. Would such quasi-official jurors form rather an important element on the petty jury?
No, they are a very small element. I can tell you, I think, precisely how many were added by that. In 1877, which I think was the first year that this came in operation, there were 261 such names returned on the revision out of 4,690, the total number of names upon the list. That is before the revision.

457. Would they form an important element in the constitution of an impartial and disinterested jury?
I do not think they would at all, because in point of fact those gentlemen would not attend on a petty jury.

458. Can you give any figures as to the number of cases in which jurors have been fined for not attending?
No, I am not prepared with any figures of that sort. Of course I have no access to documents which would give us such information.

459. Are you aware whether a very large number are fined for not attending?
We know that a good many are fined, because a certain proportion of our members come to us and ask for assistance in getting the fines remitted.

460. Have you known cases where a jury has been called over on a fine of 50 *l.* in Dublin?
I have.

461. That is a very high fine?
It is a very high fine.

462. What was the cause of that?
Objection, I think, to attend on the part of men of business on account of their business engagements.

463. Not on account of a particular trial connected with which there was a good deal of excitement?
I do not think that I have any personal experience of being present on such a trial as you allude to.

464. But there have been cases of that sort, have there not, where that has been the motive preventing jurors attending?
There have been I have no doubt.

465. You spoke of excessive service of jurors: would you explain a little more at length what you consider to be excessive service?
When our association first commenced operations, a large proportion of the Dublin jurors were summoned twice in every year on the special panel. We considered it excessive service for a gentleman to have to leave his business or occupation twice in the year for two or three weeks, perhaps. Now it only comes round about once in the year, and I think that if it did not come round oftener than that the jurors would not be dissatisfied. This is speaking of the city of Dublin only. Of course, in other places, the service is not so frequent.

466. If you amalgamated the city and the county jury lists, would you get a better jury than you do now, or a worse one?
I think that the jury would be about the same.

467. You spoke of a special panel of 96 where there were, I think, you said 60 who were not qualified to serve either from death, or from change of residence; at what time of the year was that panel called?
At the Michaelmas common jury sittings, 1880.

468. When

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468. When did the revision take place?
The revision court sits in October.

469. Then that was very soon after the revision court sat?
This was the old book that was in use.

470. Therefore it was nearly a year old?
Yes, this book goes out of use at the end of the year.

471. Would it have been more perfect if it had been held immediately after the new revision had taken place?
The book would not have come into use immediately after the revision.

472. But how soon does it come into use?
The primary lists on which the jury books are founded are prepared in July. The revision court sits in October to go over those lists, and amalgamate various ratings, and correct all the errors possible. The book is then prepared by the clerk of the peace, and handed to the sheriff, and it comes into use on the first day of Hilary Term of the following year.

473. Then would it have been more correct than it was at Michaelmas if it had been held immediately after the Hilary Term?
It would have been if the book could have come into immediate use; but it is obvious that there must be some time allowed for preparing the books for the sheriff.

474. But is the revision and the whole process a satisfactory one, or not?
I think it is satisfactory in principle, if it could be amended in the way that I have stated, by having a more frequent interim revision.

475. You spoke of certain attempts to evade service; have you actually known such evasions to take place?
I have heard jurors say that they have got their premises in the names of their wives and female relations; and I heard the head of the firm that I have alluded to state that their instructions to their employés were, that they could not allow them to attend on juries, and that they must disfranchise themselves. We had one particular case before us specially, in which a gentleman of some position in the City had got his house entered, and a legal document drawn up, taking out the lease, I think it was in his wife's name, on purpose to evade service on a jury, and not from any motive except the wish to avoid the irksomeness of the duty.

476. Lord *Inchiquin*] You said just now that you were not aware of any case in which the Dublin juries, in your opinion, failed to do their duty on account of intimidation or threats of any kind?
I cannot call any case to mind.

477. Do you recollect the recent State trials?
I do.

478. Do you believe that any threat or intimidation was used in that case to prevent the jury doing their duty?
I cannot say that there were, of my own knowledge; I have not heard of any.

479. Lord *Ardilaun*.] What is the qualification for special jurors in the county of Dublin?
£. 150 annual value, excepting in the villages or townships within the county, and then it is only 50 *l*.

480. Do you think that that is too high?
It is a very difficult franchise to deal with, because, in the case of the county special jurors, a good many largish farmers will be valued at 150 *l*. and over that, and they will be men perhaps not of the same intelligence as, it may be, merchants in the City of Dublin residing next door to them who have domains that are valued at 140 *l*., we will suppose, or 130 *l*.

 481. Is

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481. Is there any opposition to the amalgamation of the County and City of Dublin panels, which I find was strongly recommended in the evidence taken before the Committee which sat in 1874?

I do not know that there is any opposition whatever. I think that there is a very general feeling in the City of Dublin and, so far as I am aware, in the county also, that it would be a very good thing to amalgamate them. I do not know on what grounds it was thrown out in the former Bill.

482. Do you know what is the proportion of cases tried in Dublin which are not local cases?

I could not form any opinion.

483. Would you suggest a different rate of payment for cases in which the venue has been changed to Dublin from local places?

We have not considered any such suggestion as that. I think it would be rather a difficult thing to make the distinction.

484. On the grounds that it was part of the duty of the people in the locality to try the local cases, and that they were a burden upon the Dublin jurors?

I do not think that we should be prepared to recommend that. From my own personal opinion I should not recommend it. Mr. Baron Dowse, with relation to the amalgamation of the county and the city jury lists, I see in his charge to the grand jury on the 6th of August 1879, strongly recommended that amalgamation, and I think it has been recommended by others.

485. Mr. Ball Greene, I think, in his evidence in 1874, made the same recommendation?

He did.

486. Lord *Emly.*] Do you know of any case in which so large a town as Dublin has been amalgamated for jury purposes with the adjoining county?

I think that in the case of London and Middlesex the same thing holds good. Since 1834, if I recollect rightly, that has been the case. With regard to the question as to the relative amount of business as regards Dublin, there is only one county case for 10 city cases, that is to say, one case coming before a county jury as compared with 10 cases coming before a city jury.

487. Lord *Ardilaun.*] That is the County of Dublin as compared with the City of Dublin?

Yes.

488. Does that include cases in which the venue is changed?

In the large majority of cases the venue is laid within the City of Dublin when they are brought up from the country.

489. Earl of *Derby.*] You have spoken of the necessity of a more frequent revision of the lists; would you apply that to the country generally, or to Dublin only?

It would not perhaps be so necessary in the country, because there is not the same amount of business calling for the constant attention of jurors; but in any case where there is a small proportion of jurors to the amount of work to be done, it would be very desirable, I think. On several occasions the judges have had to adjourn their courts, because such a large proportion of the names on the panel were not good names.

490. Do you mean that they were not legally qualified?

No; they had either died or removed since the revision.

491. *Chairman.*] Has your association been in communication with provincial jurors' associations upon any of the points with regard to which you have given evidence to-day?

We have been in communication with Mr. Harvey of Waterford, on behalf of the Waterford jurors; I do not think that they have any formal association there.

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there. I do not recollect any other case in which we have communicated with any provincial jurors' association.

492. You have no general connection with the rest of Ireland.? No.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next, Twelve o'clock.

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Die Jovis, 23° Junii, 1881.

PRESENT:

Lord President.	Lord Silchester.
Lord Privy Seal.	Lord Penzance.
Earl of Derby.	Lord Emly.
Lord Tyrone.	Lord Ardilaun.
Lord Inchiquin.	

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. BENCE JONES, is called in; and Examined, as follows:

493. *Chairman.*] You are, I believe, a Resident Proprietor in Ireland?
Yes, I am.

494. How long have you been acquainted with the circumstances of the country?
Nearly 40 years; fully that; in fact, I was acquainted with the country before I resided there.

495. You are, I understand, able to give this Committee some evidence with regard to the operation of the existing Irish Jury Laws?
Yes, I am. I served as a special juror frequently when I first went to Ireland, and I had been at the Bar here in England several years before I lived there, so that I knew a great deal and saw a great deal of the whole system; and, as a magistrate at quarter sessions, I have seen a great deal of it too.

496. Have you served in Ireland on petty juries, as well as special juries?
No, I never was summoned since the petty jury system began; I only was summoned as a special juror, but of course I know about petty juries pretty well from my experience of quarter sessions. The class of persons summoned for petty juries is very much the same at assizes and sessions.

497. Your experience extends back beyond the date of the Act of 1871, commonly known as Lord O'Hagan's Act?
Yes. I went to live in Ireland in 1843, and my experience extends from that time down to the present.

498. Did any considerable change in the character of the juries result from the introduction of the rating qualification of the Act of 1871?
I could not say what was the exact cause of the change, but there was an entire difference in the results. There has been far greater difficulty in getting convictions in clear cases since the last Act than there was before. That there has been a very great change indeed in the whole matter is very certain; we know that from the result of our committals as magistrates; we are quite sure of what the change has been.

499. And have you observed the same difficulty since the passing of the amending Acts of 1873 and 1876?
I could not draw any distinction between them in that way. I have not had enough to do with the matter in Cork, though I reside in the county constantly, almost; I have not had enough to do with it accurately to draw a distinction of that kind.

500. Perhaps you would state then to the Committee the precise points upon

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upon which you feel able to give us evidence, founded upon your personal experience?

At the time I was serving as a special juror, the contrast was most striking between what I was familiar with at the English Bar and what went on at trials in Cork; there was never any certainty, however clear the evidence, of a verdict one way or the other in Cork. When any question was raised, though it did not really properly belong to the case, such as a religious question between a Protestant and a Roman Catholic, I have seen the jurors vote according to whether they were Protestant or Roman Catholic, for one side or the other; that is most repugnant to my notions as a lawyer; I never saw such a sight, and never was so scandalised at anything in my life.

501. Should you make that observation as to the trial of cases generally, or as to the trial of cases of any particular description?

I apply it to the trial of ordinary cases; that was the remarkable part of what I saw, that it was not a case properly involving a religious question. It was merely accidentally that the question of religion arose at all, but the instant it did arise there was no talk about the evidence; the two sides drew apart as if it were a matter of course. It was the most painful thing I ever saw, and I have seen it more than once.

502. Does that apply, whether the case is a civil or a criminal case?

What I have spoken of was in civil cases. I cannot say I have been a juror in criminal cases. On the other hand, in criminal cases at quarter sessions, we always knew that if the police were engaged actively upon one side or the other, there was threefold difficulty in getting a verdict for that side. The feeling evidently was against the ruling powers, and there was the greatest difficulty in getting a conviction in consequence.

503. Then when you speak of the contrast between what passes under these circumstances in England, and what passes under the same circumstances in Ireland, you mean, I suppose, that in the one case public sympathy, as manifested in the jury box, is on the side of the law, and in the other case it is opposed to it?

No doubt that is so. I have no doubt that in a different form something of the same kind could be found here in London; in a trial between a gentleman and a tradesman, a jury of tradesmen would lean very much against the gentleman, but in Ireland it was beyond a mere leaning.

504. Have you been able to form any opinion upon a point which has been referred to once or twice before this Committee, namely, whether persons of rather a better class than the ordinary run of the jurors, take their share of service on the jury, or whether they habitually absent themselves?

I could not say that I have seen enough for that; it has not been in my particular line. I do not think that is where the fault is; I think there is as much trouble with people of a better class as there would be with people of the present class; not to the same extent, perhaps, but there is the trouble all the same. Until of late years the quarter sessions of the West Riding of Cork were held at a number of different towns; it was all one quarter sessions, and for a long part of the time I have lived there, each quarter session was held only at one town. The Act of Parliament fixed a sort of roster by which the session went round the riding. The juries at one town could be fairly trusted in a criminal case to convict; the juries at other towns were perfectly certain not to convict. We knew quite well that at Bandon probably there would be a fair trial; I am not speaking of the town of Bandon, but the district round, from which the country jurors were summoned. In a trial at Macroom or at Bantry it was nearly certain that you would get no conviction, that we all knew beforehand, consequently it often made a considerable difficulty with committals to avoid those places in some cases where we knew there was great doubt whether a conviction would follow; the thing was notorious; it was known not only to the magistrates, but to the police and attorneys, and in fact, known to everybody concerned on every side.

505. Any shortcomings of that kind on the part of the jurors would not be touched, would they, by merely altering the rating qualification?

Very

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Very slightly indeed; that would not affect the result except very slightly. There is a regular system amongst the people of canvassing; I have known that to be done even with the grand juries. I remember a very disgraceful case in which I myself committed for trial; I was obliged to commit to Bantry; and I know that a large farmer, who was known to many of the Bantry grand jurors, went down and canvassed them, and got the bill thrown out; it was a plain case, but the bill was thrown out by the grand jury there. The thing arises from want of principle; but that is the whole difficulty we have in everything in Ireland, the want of moral principle.

506. You attribute it to that rather than to actual intimidation or pressure exercised upon the jury?
Yes, I do not think there is actual intimidation in our county. We are a very quiet county ordinarily, and I do not think there is actual intimidation.

507. Lord *Penzance.*] Which is your county?
Cork.

508. *Chairman.*] During the last few months, when we know the state of the country has not been particularly quiet, has there ever been, within your knowledge, any actual intimidation exercised?
Not within my knowledge; it has not come before me, though there is no doubt nobody could be convicted of anything during the last few months; it was no use bringing cases before the court. When I was myself Boycotted the police had orders to do their very utmost to prosecute somebody, but it was quite impossible to get a shadow of evidence; the police came to me and I gave them all the help I could, but there was not the shadow of a shade of evidence obtainable against the persons who committed the offences.

509. The failure of justice, owing to the want of evidence, would be a distinct thing from failure of justice, owing to misconduct on the part of the jury?
No doubt; but the jury not being to be trusted, added to the difficulty of getting evidence in all such cases. The want of character in our juries affects everything with us. We have one most remarkable proof in Cork. The Cork butter market has been the very plague of the lives of a great many large farmers for a generation or more. It was an old market regulated by Act of Parliament before Mr. Huskisson's time, and he abolished, as he thought, all the compulsory part of the system; but the merchants met together and executed a deed *inter se*, and carried the thing on just as before. We have had five actions to try and open that market. In every case the judge summed up breast-high with us; he said there was not a shadow of a shade of legal right in the market whatever. In every case the butter dealers had a friend on the jury; there was no verdict, and they went on exactly the same next day, and have continued to do so up till now. I brought it before the Duke of Richmond's Commission, and am in hopes that they will have something to say to it; but those actions were defeated by the deliberate plan of getting a friend upon the jury. There were some one or two men who differed from the rest of the jury in every case.

510. Then I may take it that, speaking generally, the point upon which you wish to give evidence specially, is that in that part of Ireland with which you are familiar, there is a want of independence in the jurors which prevents them from discharging their duties in a proper spirit?
Yes, I should say there is not only want of independence, but there is a want of that principle which makes a jury to be a fair tribunal. It is that, practically, a jury now is mainly the means of securing that offenders shall not be punished, instead of effecting their punishment for the public good.

511. *Lord President.*] Your experience goes back, I think, to 1843?
Yes.

512. Do you draw any distinction between any period from that time to the present, as to the state of things being better or worse?
Since Lord O'Hagan's Act passed they have been appreciably worse; I told Lord O'Hagan so myself only last year; the difficulty now is most serious, and needs a remedy.

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513. In the cases you referred to of juries on which you were sitting, where Roman Catholics and Protestants drew themselves apart at once into two sides, is that since or before the passing of Lord O'Hagan's Act?

No, that is long ago. I only mention that as showing of how very little use the jury system is in Ireland, and how unsatisfactory a tribunal it is, even when chosen with a better class of people upon it; these special jurors were in those days magistrates and the better class of people.

514. These difficulties occurred then?

These difficulties occurred then; and, in the cases I mentioned in relation to the Cork butter market, they were all special jurors, the best people they could get for special juries, and selected in the way as, I daresay you know, special juries used to be selected in Ireland; specially selected. It is a want of moral principle that causes the difficulty; that is the whole of it; neither more nor less.

515. You do not distinguish between any particular classes of cases, such as cases of violence?

We have long practically felt the distinction in the cases in which the police are concerned. It seemed as if the appearance of a policeman was like a red rag to a bull; it set the jury against the case; but then I am bound to add that outside the jury the action of the Government has helped this uncertainty of law very much. In all the rows I have known in Ireland where rioters have been tried, in all the years I have lived there, they have invariably (though they have been convicted or pleaded guilty) been let off. The plan was to put off the trial as long as they could to let things get cool; they then applied through the priest to the county Member, and said that they were willing to plead guilty, or do anything that the Government wished in that way; and they did plead guilty, and were let stand out on their own recognizances, and we never heard anything more about it. I have seen that happen over and over again in cases in which I have been one of the committing magistrates, and where the whole was under my own eyes.

516. In cases other than political cases, do you mean?

Yes; rows in which politics were very indirectly concerned at all.

517. Who intervened?

It was done through the Roman Catholic clergy applying to the county Member, and the county Member or Members went to the Government to represent that these people were poor innocent people, but that they were willing to plead guilty and submit to acknowledge themselves wrong, and come up for punishment when called for; that is the way it has been done.

518. But who decided on that proceeding?

Sometimes it was one Government, and sometimes it was another.

519. Which member of the Government sanctioned it?

I suppose it went in the first instance to the Attorney General; that is the usual course. There were recommendations got, and gradually it went from one to the other, and as time passed away people no longer thought anything more about it.

520. I should be rather glad if you could specify some of these cases. I confess, in my experience, I do not remember any application of that sort?

I can assure you I have myself taken part in such cases. I remember one most strikingly which occurred at the time the present Baron Deasey was attorney general.

521. That is a good many years ago?

It was a striking case in which it happened; it is often talked about.

522. You mean that the executive government have interfered to stop the ordinary proceedings of justice?

No, that is not the form in which it is done. It is done in this form: it is made known to the law officers through influential men that an accused person is willing to plead guilty, provided he is allowed to stand out in that way the form of law is gone through. I have seen a man come into court and plead guilty; thereupon sentence was deferred, and he was let out on his own recognizance to come up when called for; and in such cases they never are called for.

523. *Lord*

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523. *Lord Privy Seal.*] Which class of cases do you refer to?
Mainly rows and riots of that sort, where there is a certain degree of aggravation, and where in reality there ought to have been some punishment, if only a month on the treadwheel.

524. *Lord President.*] The motive for that is not any political motive then?
No, it is as bad on one side as on the other; I do not attribute any political motive; it is a regularly established system. At one time in Cork we had two Conservative Members for the county, and the priest got their influence when the Conservatives were in office; and there were two Liberal Members for the city, and they got their influence also when the Liberals were in office, so that they had it in both ways.

525. Lord *Penzance.*] But surely this could not have been done without the acquiescence of the presiding judge?
It could not have been done without the sanction of the presiding judge; but often he was only the chairman of the quarter sessions. In the particular cases I am alluding to, we had an old chairman who was good for nothing really, and with whom anybody might do anything he liked.

526. Is it your idea that the chairman of quarter sessions was influenced by the executive government?
If the prosecuting attorney gets up and says: "These men are willing to plead guilty, Sir, and come up for judgment when you please, if you require it;" it is invariably done, whether through the Attorney General or the Government.

527. Do you mean that there is an agreement not to sentence them?
Yes, that is understood.

528. Is it done in open court?
It is done in open court, quite openly.

529. These men are willing to plead guilty on an understanding that they will not be sentenced?
Provided you allow them to stand out and come up for judgment when called for; the form is quite correct.

530. *Lord Privy Seal.*] Have you ever thought, or do you suppose, that in such a case the Crown prosecutor may have felt that the evidence was so insufficient that there were great doubts about obtaining a conviction?
I think it possible that there may have been such cases.

531. And that that may have been the reason for their consenting to the accused party pleading guilty?
Yes, no doubt; but the practice was so notorious that all the magistrates perfectly well knew what was going on.

532. You told us that the only reason and motive for this course of conduct on the part of the Crown prosecutor was the influence of the priest or the Member; do you speak from rumour and the stories of the country, or absolute personal knowledge, when you say that that was the actual motive and the only one?
Of course I was not in their secrets; I could only judge from the outward acts that appeared before us. Some of us, at any rate those of us who have been lawyers, knew pretty much what had been going on, and the course that would be taken under certain circumstances. I cannot speak as to any particular case; there may have been in some cases such reasons as you suggest; possibly the badness of the jury may in some degree have influenced the Crown prosecutor, who may have felt a doubt about getting a conviction; though I do not think that had much to do with it in the cases I am speaking of. The Crown prosecutor was not a very bright man.

533. It is important to know whether you are speaking from knowledge of the facts, or merely giving an opinion and rumour?
It is something more than opinion and rumour. I cannot say I knew it, because I was ever a party to an arrangement of that kind; I have always striven to the utmost to stop such things.

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534. Do you mean to say that the impression amongst magistrates and others is, that this was done through the influence of the priest and the Members of the county, apart from the evidence and the legal bearingsof the case?
Most certainly; there is not the least doubt about it in their minds.

535. Lord *Penzance.*] Is there any fact you can mention that would lay a fair ground for such a surmise as that?
It is a good many years now; 20 years ago, perhaps.

536. What happened was, I understand you to mean, that the case was called on; the counsel, or some one connected with the case, got up and intimated that if the judge would allow the prisoners to stand over upon their own recognizances to come up for judgment, they would plead guilty?
That is what happened.

537. Is there any fact you can tell us of which would show that that happened, because the county Member had taken any part in it?
It was really arranged before, outside I have no doubt.

538. That is surmise again. It may be, as has been suggested by the Lord President, that the evidence being doubtful, or perhaps doubting the jury, the lawyers, quite independent of anything to do with the government executive, thought that the best course to adopt would be to take the man's plea of guilty; that may very well have been the case; if it happened in this country that is what we should all think; but you seem to think that something must have been going on in the background; is there any fact you can give us upon which that representation rests?
No, I cannot give you a fact; but I have been asked whether it is the opinion of intelligent magistrates that that takes place, and I can say that it is. I know that magistrates of great intelligence have sometimes stuck to a case in order to prevent such a course as that being taken; magistrates have themselves told me so. When it was known that a sharp man of weight meant to force an exposure if he could, it made people much more cautious; but I should be very sorry to convey the impression that I know absolutely the facts myself. I was not behind the scenes, but the outward facts, as far as I know them, all looked that way; and it was the universal impression amongst us. We had no interest in the matter, except the interest of order. They were not cases in which we were personally concerned in any degree.

539. Lord *Emly.*] You mentioned, I think, that when you were in the habit of serving as a special juror, the jury divided itself into two camps, one of which was the Protestant camp, and the other the Roman Catholic camp; do you consider that in a great number of those civil cases there was a failure of justice; that is to say, a man who was applying to get a certain property did not get it, or *vice versâ?*
I have not the slightest doubt of it.

540. And that that was a common thing?
I cannot say anything about its being common; I have seen it happen more than once.

541. On these special juries in the county of Cork, at the time you speak of, of course the majority was largely Protestant?
Yes, the majority was Protestant; but the minority was quite enough to hinder a verdict.

542. Supposing your statement to be correct (which is very different from that, certainly, to which my experience leads me in the neighbouring county), a Protestant according to that statement would always get justice and a Catholic never; or a Protestant would always succeed in his case and a Catholic would not?
The result was that there was no verdict; nobody got justice that way.

543 *Lord President.*] Should you not be inclined to say that in the case of the rows, as you described them, it is sometimes almost difficult to say whether the prisoner in the dock or the prosecutor is most in fault, and that there is not very much to choose between the two parties in those scuffles?

Of

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Of course, there are cases of that kind; but there are also other cases in which there is nothing of the sort; and the real mischief that I complained of, and that men of intelligence complained of, was, that the law was not enforced. The law was brought comparatively into contempt by its not being properly enforced.

544. Does the same unfortunate feeling prevail as to there being some partiality brought to bear upon these subjects with regard to memorials for the commutation of sentences which are so very frequent in Ireland?
Certainly. Nearly everybody will sign memorials for anything you please in Ireland. I suppose I am one of very few men in the county of Cork who ever refused to sign a memorial.

545. Does the impression prevail that there is a partiality in dealing with this question as well as with those you mentioned before?
I do not know that I can speak much of that. I do not know that my attention has been specially drawn to it; at all events, not enough to enable me to say positively anything about it as of knowledge. But it must have been so.

546. You spoke about petty juries in criminal proceedings in Bantry and Macroom?
Yes.

547. Would your remarks apply to the quietest time when there was no disturbance; we will take 1853 or 1854, for example?
Yes, they were bad juries even then.

548. Do you say that they were always bad juries?
They were always bad juries in certain places. They would convict for a petty larceny or pocket-picking or anything of that sort, but not for anything which the peace of the country really depended upon.

549. Lord *Inchiquin.*] With regard to what you were saying just now as to men pleading guilty, do you not think it is very often the case that they plead guilty in that way owing to the difficulty of getting witnesses to come forward, on account of fear?
There is no doubt that that is the case to a certain extent, and there is no doubt, as I say, that there are cases in which it is better to take that course, of allowing them to plead guilty.

550. Lord *Penzance.*] As I understand your evidence, your impression with reference to the jury is, that owing to a want of moral sense and of a determination to abide by their oaths, the juries are, as a rule, what you call bad juries?
Yes, I have no doubt of it.

551. You do not confine that observation to their action in any particular case?
No, I have no doubt they are bad; they may do better in cases in which there is no motive to lead them astray.

552. But if there is any local prejudice, against the police, for instance, or in reference to an agrarian outrage, or any religious prejudice, then you think they are not to be trusted?
Not a bit.

553. You made the remark that nobody could be convicted in Cork in the last few months. Do you mean the Committee to understand that it is your impression that at present, even in a very clear case, there would be no reasonable expectation or certainty of getting a conviction?
It is a mere chance. I know there were one or two convictions got by Judge Barry, which he did not expect, and which nobody expected. It is a mere accident as to who happens to be serving upon the jury.

554. Would there be anything like a reasonable certainty, if the evidence were perfectly clear, of getting a conviction?
None at all.

555. That you feel assured of?
I am quite sure of that; none at all.

556. You speak entirely of the county of Cork?

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Entirely of the county of Cork; it is the only county I know practically. The county of Cork embraces one-eleventh of Ireland; so it is pretty large.

557. You said that in Cork you thought there was no intimidation, but th a there was pressure?
I do not think there is any intimidation; I have never met with it.

558. What do you mean by pressure?
Influence.

559. Influence of a persuasive kind, do you mean?
It is not honestly to be called intimidation.

560. I do not want to put the word?
I mean a sort of pressure which cannot honestly be called intimidation.

561. Of the same character, but not strong enough to warrant the term?
You may tell a man it would he better for him to do so and so, and that something might happen if he did not do it; but that would not be absolute intimidation.

562. It is of the same family?
It is of the same family, but a younger child; not so hig a one; it is not so bad.

563. It does not go to the full exteut of telling a man he will be shot if he does not do it?
It is bad, but it is not intimidation.

563.* It is pressure accompanied with menace?
It is the exact thing which in Ireland is so fully understood of menacing without committing yourself, so as to get some of the gains of intimidation without the risks.

564. Earl of *Derby.*] Do you mean that it is veiled intimidation?
I have no doubt it is veiled intimidation in one way. I could not very well define it; it varies infinitely with each person in each case.

565. Lord *Penzance.*] You instanced the difficulty of getting a true verdict, even in a civil matter, such as that of the hutter market?
Yes.

566. You say you think they were defeated in that case by the other side getting a friend on the jury?
Yes.

567. And no verdict was returned?
Yes.

568. Is that constantly the case in Ireland?
I may tell you that very few have the opportunities the hutter market dealers have. It is a most curious system; they lend money to all the principal farmers, or most of them in the county.

569. The roots are very widely spread?
In that way they have a power which it would take long to explain; but they are nearly all a rather low class of people; they are not men with high mercantile instincts, and they do not scruple to use their power to the very utmost.

570. What I was asking you was, whether they work so as to get a verdict in their favour?
If there was no verdict that answered their purpose as well as getting one.

571. That is what often happened, was it?
There was no verdict at all on five trials.

572. Have you known that want of a verdict to happen often in criminal cases in Ireland?
Yes, I have.

573. The reason why I asked the question is this: it has been suggested by some people that it would be desirahle to take the verdict of a majority. How would that work, do you think?

I do

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I do not think that would work a bit better. I do not speak of one sort of person more than of another being to blame; it is a general want of principle, and I believe the verdict of the majority would be as much jobbed as the unanimous verdict; of course you would not defeat it in just the same way; but it would not work justice; you could not rely upon it.

574. You would have no better chance, you think?
You might have a little better chance, but it would be so little that it is not worth thinking of. It is the most wonderful thing in the whole world, the way in which people in Ireland contrive to outwit the law in everything.

575. According to the complexion your evidence takes, it would seem that no manipulation of the jury system in any form or shape would do any good to cure the evil?
I do not believe it would. I believe the only remedy is to be found in adopting a practice of the same character to that of changing the venue, namely, that the Court should have the power of trying cases, when an honest jury could not be had, before three judges, as they do in Canada.

576. Changing the venue is a very different thing; what you suggest is the changing of the tribunal?
It rests on the same motive. The Court is informed that a fair trial cannot be got in one place, and is asked therefore to change the venue to another place. Where there has been a trial and no verdict, I would try the case over again before a tribunal which could be relied upon to do justice to innocent people. If I had to be tried, I would rather be tried by three judges than by a jury, either in England or Ireland, if I were innocent. I would prefer that mode of trial many times over, and I am sure better justice would be done in that way. We want certainty of conviction, and punishment; not severity of punishment. At present nobody gets punished for anything scarcely.

577. You spoke of trying a man over again; I should like you to think a little about that and tell me whether you are of opinion, if it were desirable owing to the jury system in Ireland to make a change and to call in the aid of judges in the place of a jury, that a man should be tried first by a jury and then that somebody else (it has been suggested to us that it should be the Attorney General) should, if he thought the evidence clear, and therefore that the man ought to be convicted, send him before three judges; would that be better than trying him before three judges in the first instance?
I do not say that as my own opinion of what is really best. I was supposing that the superstition, if I may so call it, about juries that many men have, made it necessary in the first instance that an offender should have the opportunity of getting off by a verdict of acquittal. The trial by a jury having taken place, and that having failed, I would then try him properly.

578. You do not attach yourself particularly to that way of introducing the trial by judges?
Not at all; but it is necessary, as the foundation of all good in Ireland, that the law should be able to be enforced in some way that is really effectual, so that people should not have the feeling they have now; both those who commit crimes and those upon whom they are committed, now feel that there is no certainty at all of the criminal being convicted, whatever the evidence may be. That is a sad and grievous mischief. That is one great cause, I am convinced, of the unwillingness of many to give evidence. If they thought that the accused was likely to be convicted, in many cases they would give evidence. When they know that he will not be convicted, or when they think it most likely that he will get off and that they will have the odium of having given evidence against him, they will not give evidence.

579. Those who would be willing to support the law, if the law would do its work, are unwilling to come forward and expose themselves when it will not; is that what you mean?
I am sure there are many cases in which that is so. It would not meet all cases, but still there are many cases in which it would be so. That is our crying want at the present time, and has long been so. One good conviction would be

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very useful. There need be no severity of punishment; ever so trifling a punishment might be sufficient. I have often said that the exercise of an arbitrary power to commit for one month to the treadmill anyone who deserved it, would keep Ireland quiet. They cannot stand the certainty of punishment. All who do wrong constantly keep one eye over the shoulder to see a way to escape, and they have nearly everybody in league to help them to do it. That is the real difficulty.

580. Earl of *Derby*.] I suppose we may take it that, according to your belief, there is a general laxity of feeling with regard to crime, and a strong disinclination to support the law?

Yes, I think so.

581. Do you suppose that that feeling exists more strongly among the classes who sit on juries; or is it your opinion that in that respect those classes are fairly representative of the general opinion?

I am afraid that that nearly represents the general feeling. When you get more educated people, you get more intelligence and more unwillingness on the part of such people to commit themselves to foolishness; but there is a general laxity.

582. Take the case of any offence which had caused a general interest; an agrarian murder, for instance; do you suppose that a juryman who was known to have been favourable to a conviction in such a case as that would be safe in his own house?

Sometimes he would, and sometimes he would not. They used in Lord Chancellor Blackburn's days to issue a special commission, and in order to get a fair jury to take the jury from the grand jury panel. They then got all the best magistrates in the county to be jurors. In the case of Lord Blackburn's special commissions, they almost always got convictions; but then the law enabled them to take the grand jury panel and call it over in order, and they could take the best 12 men they could find.

583. Do you suppose that the jurymen's unwillingness to convict arises from terror in relation to themselves, or from sympathy for the accused, or both together?

I could not define that; I think it is more a general laxity; sometimes it is fear, and sometimes sympathy, and sometimes it is a mere general laxity. It is the very thing I referred to when I spoke about signing memorials for the release of everybody. It is about the most miserable thing that one can think of, though the anger and excitement which is aroused if you do not sign the memorial for a man's release is really laughable, looked at rightly.

584. I suppose a man could hardly make for himself a worse name in your part of the country than by endeavouring to be strict in enforcing the law?

I do not know that. I am pretty strict; I think, in fact, very strict, but I do not think I have enjoyed a bad name up to now. I remember in the time of the cotton famine a vessel laden with cotton was wrecked on our coast, and a woman was caught by a policeman with her arms full of cotton; she was carrying it away at night. I sent her to gaol for a month. The priest came to me (he is dead since) begging and praying, and entreating me to sign a memorial to get that woman out of gaol, and he left me in the strongest anger and frenzy almost, when I said I could not do anything of the kind. That was a man who was far more intelligent than the common run; he was really the best priest I have known almost; he had then lately come to the parish; but he was very angry that I should stand out against his recommendations. I said, "The woman was caught with her arms full of the cotton; I cannot sign a memorial to have her released."

585. Rightly or wrongly, is there not a very strong conviction among the peasantry and poorer classes that everything depends upon the influence brought to bear upon the magistrate?

Yes. With many magistrates it is so, no doubt; they often do not act right, most clearly. When I first went to Ireland, I had the greatest difficulty to prevent people coming and begging me to listen to their cases before in petty sessions;

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sessions; and afterwards, as soon as they found when I got into court that I said, "So-and-so came to me yesterday and wanted me to hear his side, and I must say I have a very strong impression that he must have a very bad case from his doing so," they gave it up. Of course that caused great anger.

586. I understand you to say that you do not think that the alteration of the classes from which the jurors are taken would make much difference?
I do not think it would. I think you want to go more to the root of it than that, or to have the power of doing it, at any rate, and that the law should not be a laughing-stock, as it is now really, and as it was all through last winter. I can say myself I never knew anything like the pain and wretchedness of feeling experienced at that time. There was nothing like a possibility of enforcing the law during all the weeks and weeks I was being injured and outraged in every kind of way.

587. You do not think that taking the verdict of the majority would be an effective remedy?
Not the least.

588. Are there not many cases in which the prisoner has some one friend on the jury, where he may not be able to secure four or five?
That would bring it to what Lord Emly spoke of. If it were made a question of a majority, religion would come in, and you would have the one party going one way, and the other the other. That is what all sensible men have striven against. All our lives we have striven to prevent this kind of motive coming into judicial proceedings.

589. As I understand, you would be willing to compound, as it were, for a lighter sentence if there were a greater certainty of conviction?
I do not care how light the sentence is, so long as it is certain. In my district, I had the most to do in keeping order during the Fenian trouble, and I never gave any punishment but one month on the treadmill. They came back after the month on the treadmill shaking their shoulders, and saying that it would kill Samson. It answered the purpose just as well as if I had given them 12 months; they never did that which brought them there any more. I remember meeting the head policeman one day, and saying to him, "How are your friends from the treadmill?" "Oh," he said, "you might send them with a message down the pump now, they are so meek and humble." They are not a bad kind of people who commit all these offences; they are not really bad, in many ways.

590. Lord *Emly.*] Do you suppose there are many more instances of disagreement of a jury in civil cases in the county of Cork, than there are in any county in England?
Yes, many more, so far as I can judge.

591. I collect from your evidence that at the time you speak of, when you served upon juries, the disagreement of jurors in civil cases was a very common thing?
Yes, very common, and it is so now; there is no doubt the whole way of administering justice is wrong somehow or other; how it can be set right is another question; but law and order are not enforced to the great hurt of the country.

The Witness is directed to withdraw.

MR. CONSTANTINE MOLLOY is called in, and Examined, as follows:

592. *Chairman.*] You are, I believe, a practising Barrister, and a member of the Home Circuit?
Yes, I joined the Home Circuit in 1860; I was called to the Irish bar in 1858.

593. You are one of the Crown prosecutors?
For the King's County.

 594. I believe

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594. I believe you drafted the Jury Bill of 1871?
I did.

595. Had you anything to say to the drafting of the Amending Acts of 1873 and 1876?
The one of 1873 I had.

596. We may take it that you have paid great attention to the subject?
I have for a number of years.

597. Would you state briefly to the Committee the circumstances which immediately led to the legislation of 1871?
There was a recommendation of the Crime and Outrage Committee of 1852, and great difficulties arose from time to time in getting jurors, owing to the small number of persons that were qualified under the Act of 1833, that is 3 & 4 William the Fourth, c. 91. That Act required a lease as an essential part of the qualification of the jurors. There was only one class, namely, householders, rated at 20 *l.* in towns or cities that could be on juries unless they held a lease. The number of leases in Ireland had very much diminished, and then when jury panels were returned they were frequently exhausted by challenges on the ground of want of qualification; and I know myself two or three occasions where great difficulty occurred. A prisoner at quarter sessions in a case of stealing money from a cattle dealer was sent forward for trial; I think it was at the October sessions; he did not wish to be tried in that quarter sessions district, and he challenged all the jurors that were on the panel. He was entitled to 20 peremptory challenges. The trial was postponed to the following January sessions, and means were taken to have every available juror resident in the district summoned; but the number that were qualified were so few that the man exhausted the panel by his challenges; and it was found necessary then to bring him to another quarter sessions division of the county, where he was tried and convicted. Then I have seen, myself, cases in which a considerable amount of time was spent in empanelling a jury owing to the numbers that were objected to and challenged, for the want of qualification.

598. It has been stated before the Committee that what you have described took place to such an extent, that in some cases the panel was made up with persons who were not really legally qualified at all?
Large numbers of the names on the panels were persons of that description.

599. Should we be right in supposing that the revision of the jury lists under the old Acts was also carried on in an unsatisfactory manner?
In a most unsatisfactory manner; and there was no adequate power of correcting that. There was a case which was brought before the Queen's Bench in Ireland in the year 1861, to have the jurors' lists, that had been made out for the county of Armagh, corrected. It was brought before the Queen's Bench for the purpose of having the names of a number of persons that were on them, and who had no right to be on them, removed. In that case, in one instance, namely, in the Barony of Tureny, one man was stated as qualified in respect of having 10*l.* personal property; and as to 73 others in that Barony, their qualification was stated as being 100 *l.* personal property. These were no legal qualifications at all. And in the Barony of Armagh there were others stated as being qualified in respect of 100 *l.* personal property. An application was made to the Queen's Bench to have those lists brought up in order to have the names of those who were not properly qualified, struck out, and that the jurors' book might be corrected by striking out the names of those unqualified persons. The four judges of the Queen's Bench were equally divided in opinion. Chief Justice Lefroy was of opinion that there would be no practical result in granting the application as, if the jurors' books were brought up, those names could not be erased from it, or the book corrected by removing those names, as they had not the power under the Act 8 & 9 Vict. c. 67, of correcting the jurors' book in the matter of inaccuracies and errors of that kind.

600. I believe

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600. I believe that several Bills were introduced before the legislation of 1871?
There were nine Bills introduced.

601. Without going minutely into them, may I take it that they were all attempts to remedy the defects which you have described?
They were. They adopted the rating qualification, and they provided means for having the jurors' book properly corrected; and they also dealt with the mode of making out the panels from the jurors' book.

602. The Committee are, of course, aware of the principal changes that were embodied in the Act of 1871; would you state your opinion with regard to the operation of that Act; was it in all respects satisfactory?
I can only speak of matters that have come within my own observation, as regards the Home Circuit, and in Dublin.

603. Lord *Emly*.] What counties does that include?
The counties of Meath, Westmeath, King's County, Queen's County, Carlow, and Kildare; six counties In Dublin, I think, it made a very great and a most decided improvement in the jurors that serve. Before that there was in Dublin a class of jurors that were continually serving upon juries; in fact, some of them followed it as a profession.

604. *Chairman*.] Were those the jurors I see spoken of as "guinea pigs"?
Yes; they go through the different courts; at one sittings you would find them serving in the Queen's Bench, and the next sittings you would probably find them in the Common Pleas, or the Exchequer, or in some of the Masters' Offices.

605. Lord *Penzance*.] On special juries, you mean?
Both on special juries and common juries; there were "guinea pigs" in both classes.

606. Are the common juries in Ireland paid a guinea?
If it is a special jury the fee is a guinea to each; but the common juror only gets 1 *s*. 9 *d*.

607. Earl of *Derby*.] Do you mean that jurors serve on common juries for the sake of the 1 *s*. 9 *d*.?
Yes, they did. On the average they might have three or four cases in a day to try. These men came down there and were continually serving on the juries.

608. Lord *Tyrone*.] How did they get called on the jury; they were on the panel, but how did they get called?
They were on the jurors' book, and the sheriffs then empanelled them.

609. Because they happened to be present?
No, the sheriff gets from the clerk of the peace the jurors' book containing the names of all the persons who are qualified. Then when he has to make out his panel, say of 48 names for a particular court in Dublin, he must take them from that jurors' book; and then he used always to have a large number of that class that I speak of on the panels. It was a convenience to the sheriff, for they were men that were themselves anxious to attend, and he would not have the trouble of having his messengers looking after them to bring them up to the court to serve on the jury. They generally held a small shop, or occupied a house, which gave them the qualification, and then they came down to the court themselves and served on the juries; while the members of their families attended to the little business they had in their shops. There were some of the same class on the special juries not qualified to be such. I know one case in which I was engaged in the Landed Estates Court, where it became necessary to serve a notice on a particular person, who was one of these constant attendants on special juries; and the solicitor found it utterly impossible to discover his residence in Dublin, and the only way in which he was able to serve the notice on him was by watching the court to see when he was called upon a jury.

610. Lord *Penzance*.] Is this all previous to Lord O'Hagan's Act?
Previously.

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611. *Chairman.*] What, I take it, was objected to most under the old system was the unlimited power of selection which then lay with the sheriff?

Yes, there were great complaints of the way the panels had been made out by the sheriff. And there was a very remarkable case that occurred in 1869 at the Monaghan assizes, where a panel was quashed by the court in consequence of the way it had been made out, and the trial of the prisoner postponed; and the Crown removed it from the county of Monaghan to the county of Louth, where the trial afterwards took place.

612. *Lord Privy Seal.*] But the trials were appointed in the county Monaghan, were they not?

The offence was committed in the county of Monaghan. When the trial came on at the assizes the accused objected to the panel as being improperly and illegally made out. The question was tried before the judge, and the panel was quashed, or set aside.

613. It was referred to the triers?

It was. There were two triers sworn to try the question, and it was tried by them, and they found a verdict against the panel, and it was quashed and set aside.

614. *Chairman.*] You were examined, I observe, before the House of Commons Committee in 1873?

I was.

615. You then expressed a strong opinion in favour of the principle of rating qualification; but I think I am right in saying that you also expressed your belief that the rating qualification of the Act of 1871 was too low?

That is the rating qualification in the Act of 1871 for the great bulk of the counties. As the Bill passed it was 20 *l.* in respect of land situated in country parts of the county, and 12 *l.* in respect of house property in towns; and then, in the second class, for the counties it was 20 *l.* I was of opinion that that qualification was too low. As the Bill came down from the House of Lords, the qualification in the first class was 30 *l.*; and in 1873 I was of opinion that it ought to have been raised still higher than the 30 *l.*, from the experience I had and what I saw of the persons who came on the jury panel; and accordingly in the Act of 1873 the qualification in the first class was raised to 30 *l.*

616. Are you satisfied that that alteration in the qualification has had good results?

I think it has. It was raised to 40 *l.* in 1876. The number of persons that would be qualified under a particular figure of rating varies considerably in the different counties in Ireland; in the county of Leitrim the holdings are very small.

617. I take it that there would be a very considerable difference between the class of persons you would find on a Dublin jury, and on a provincial jury?

Do you mean as regards the City of Dublin?

618. Yes?

Taking a given rating, there would be a considerable difference.

619. But your experience extends to provincial juries, as well as to city juries?

On the Home Circuit.

620. And, to the best of your belief, have those juries since the Amending Acts, performed their duties in a satisfactory manner?

There have been cases since the Act of 1871, and since the Act of 1876, that have not been considered satisfactory; but I should say the same thing with regard to the conduct of jurors on that circuit before the Act of 1871 came into operation. I saw then cases occur in which the verdicts were complained of as not being satisfactory. The same thing has occurred since. But I would say this as regards the Home Circuit, that I do not think the number of those complained of as unsatisfactory verdicts has increased on the Home Circuit.

621. When

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621. When you say that, what periods are you comparing?
As regards the Home Circuit, from 1860 down to 1873; that is under the previous system; and from 1873 down to the present time, under the system brought in by the Act of 1871. There were verdicts under the old system upon the Home Circuit that I would consider were not satisfactory in particular cases, and the same thing has occurred since; but, so far as I am able to form an opinion upon the subject, my belief is that the number of those unsatisfactory cases has not increased on the Home Circuit since 1873; they are about the same.

622. Should you say that those unsatisfactory cases are to be explained by accidental circumstances peculiar to the case, or that they are due to any general want either of independence or integrity on the part of the jurors?
It is very difficult to ascertain what the causes are that you would attribute them to. In cases of assault juries are inclined to return verdicts of "not guilty," and I could very well understand the principle upon which they sometimes act in cases of this kind. There is a row between two men; it may commence in a quarrel with the prosecutor, who provokes the prisoner to strike him; the prisoner then may have used more force than the law would justify; and the jurors in that case, not taking a legal view of the case, may be disposed to come to the conclusion that the prosecutor himself has had a great deal to do with this matter, and brought it in a great measure upon himself; and the jurors are afraid in a case of that kind to convict, lest the prisoner might get a very severe sentence for an offence that was to a great extent provoked by the prosecutor himself.

623. This would be, I suppose, the class of cases that one is familiar with in the country cases in which you have cross summonses?
Such a class of cases as would occur at petty sessions, where there would be cross summonses taken out by one against the other; but there may be an element of a more serious character in the case, as there would be if actual bodily harm or some wound were inflicted with a stick or a stone.

624. Then you would say that the acquittals in those cases were due to a sort of rough and ready desire to do justice between the parties, rather than to any prejudice in favour of the prisoner against the law?
I should think so. In the King's County I have seen at quarter sessions cases of assaults brought up to be tried, and the chairman of the county, speaking to the jurors, has said that he would be very glad if the parties would bring the matter before him in the civil court by a process to recover damages, where he would be able to give damages against the man for assault. I have seen that hint taken by parties in cases of assault, and civil bills brought to recover damages. Some of those cases have been tried by juries, and in those cases I have observed that the juries had no hesitation in doing what was right, and giving damages to the man; and I think that that had a very salutary effect in putting a check upon those assaults. Both parties were heard on the trial of the civil bill, and if the defendant was in the wrong he had to pay for it in damages, which I think was a more salutary check upon parties disposed to commit assaults of that kind than imprisonment would have been. That advice given by the chairman was acted upon, and it had a considerable effect in checking assaults of that kind after two or three of the cases had been dealt with by him.

625. Have any of these cases been in districts where there was considerable public excitement?
Cases of assaults?

626. Yes; have any of them grown out of agrarian questions?
They grew out of nothing of that kind at all. They were merely quarrels between small farmers in the district, that I do not think had anything to do with land or organisations.

627. You have not had any personal experience of such cases; I mean where the origin of the quarrel was some matter connected with the ownership or occupation of land?

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There were some cases of that kind, not exactly of assaults, but of shooting at, that arose out of questions connected with the taking of lands or farms.

628. And in those cases did the juries seem disposed to approach their duties in an independent and proper spirit, having regard to their oaths?

I think they did. At the last Meath assizes there were a number of cases arising out of the excitement that is prevailing in Ireland, in which there were verdicts of acquittal, of which I, myself, heard complaints made; but I do not think that those complaints were well founded. There were some six or seven cases where the parties were tried for rescuing goods which had been seized under civil bill decrees, or writs from the superior courts for debts due. The accused rescued the goods from the bailiffs or drove away the cattle from them, but there was no assault committed. They were sent forward for trial for the rescue, and upon the trial it appeared that the goods were not liable to be seized; they did not belong to the debtor, but they belonged to the prisoners. And there were verdicts of acquittal in all the cases except one, in which on the trial it appeared that a portion of the goods seized was really liable to be taken in execution, as they belonged to the debtor, and the jury in that case convicted.

629. Then we may take it on the whole that you are extremely well satisfied with the working of the existing jury system?

I would not say that it has given complete satisfaction; I would not go so far as to say that, because there have been complaints made against it; but those complaints have been such as had been made against the previous system. I heard complaints made of improper persons getting upon juries, but I think that if more care were taken in the examination of the jury panel, and in exercising the right which the Crown has, of ordering jurors to stand aside, those persons might be got rid of.

630. When you speak of improper persons, will you state what you mean by that expression?

A man that would be suspected of having sympathy with the accused, or being a member of any illegal or improper confederacy; or a man who, when he came up to the box, was considered not to be possessed of intelligence enough. He might have the property qualification; but upon seeing him come into the box, and seeing that he was not possessed of sufficient intelligence to understand a case of the kind he was about to try, I think such a person ought to be told to stand aside, in the exercise of that right which the Crown possesses. I think it was to meet cases of that kind that the right was established.

631. The right to challenge is the only means, I suppose, of excluding such persons from the jury?

It is the only means, where the Crown challenges and objects to a juror upon some ground or other. It must be a legal ground of challenge, if it comes to be tried; the Crown have the right as the jury is being sworn, when a person comes up, to order him to stand aside in order to see if they can get a jury without calling upon him.

632. The Crown has the right to order an unlimited number of jurors to stand aside?

Yes. In this way he would be directed to stand aside; if a jury could be got without calling him again, then there was an end of the matter; but if the panel was not large enough to enable them to get the jury without calling on the man who had been told to stand aside, he would be told to come forward, and then the Crown would be obliged to state what ground of legal objection they had to him; and unless they could show and prove a legal ground of objection, he would then be sworn upon the jury.

633. But that right of challenge is the only opportunity which is now open for excluding a person who, for the reasons you have suggested, might be an improper person to serve on a jury?

Yes; and it was always so.

634. *Lord Privy Seal.*] Does that mean that it must be proved to the satisfaction of the judge?

Yes.

635. I mean

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635. I mean when the Crown challenges the second time, has the Crown to show cause to the satisfaction of the judge?

Yes, they have to show cause to the satisfaction of the judge. I recollect a case occurring upon my circuit, where two men were charged with an offence; they were each entitled to 20 challenges The panel was gone through, and at the time the panel was gone through, the Crown, I think, had told something like 40 men to stand aside, and the prisoners, between them, had challenged about 32. Then, the panel having been exhausted, the men who had been told to stand aside were called upon, and the first man of those told to stand aside was called forward. The Crown was required then to state a legal ground of challenge to that man. They did not do so, but the prisoners objected to him; they had not exhausted their peremptory challenges, and they put aside eight of those whom the Crown told to stand aside. I think I could form a very good opinion as to the reasons that actuated the Crown in each of those cases. The Crown, in telling those men to stand aside, acted upon the principle that it was desirable not to have neighbours of the prisoner, or persons who came from his district, upon the jury, as they might not like to convict, where they were living in the neighbourhood, and where the prisoner's families lived. On the other hand, the prisoner's advisers desired not to have men from the neighbourhood upon the jury, as they were likely to know some things about the prisoners that would not help them, or might rather prejudice them in the eyes of the jury.

636. *Chairman.*] Do you think that the right of challenging so many names is indispensable?

As regards the accused?

637. Yes; I mean the 20 challenges without cause shown?

Yes, in cases of felony. In 1876, a right of peremptory challenge of six was given, which did not exist before, namely, in cases of misdemeanour, and civil cases. The number of peremptory challenges varies according to the nature of the offence. In high treason it is 35 peremptory challenges; in felony, 20; and in misdemeanour and in civil cases, six. That right of 20 peremptory challenges in cases of felony has existed for a very long time, and it grew up at a time when the number of jurors returned on the panel was limited to 48 or 50. Twenty peremptory challenges in cases of felony is a large number to give; but still, it having existed for a long time, I would be rather slow to come to the conclusion that it ought to be interfered with. I think it would be much better to have a larger panel summoned to the assizes, or whatever the court is; to have a panel of 100, or 150, or 200 names for the jury; the Crown, I think, could get out of that number a proper jury. Mr. Seed, the Crown Solicitor on the Home Circuit, was examined before the Committee of 1871, I think the Westmeath Committee, and he stated there the way in which he dealt with the panel returned by the sheriff containing a large number of objectionable names; he consulted the police officers of the county; he got reliable information as to every man on the panel, and he exercised largely the right of ordering jurors to stand by, and the result of it was, that although there were two prisoners there who were entitled between them to 40 challenges, he put an admirable jury into the box. That was the case of a special commission The jury was composed of six Catholics and six Protestants.

638. *Lord President.*] Is that Radcliffe's case?

Yes. Shooting at Major Radcliffe as he was going home from the Kells Board of Guardians. The power of the Crown to order the jurors to stand by was largely exercised in that case; but the result that followed from it, in the way the jury was made up in the box, shows, I think, that Mr. Seed upon that occasion did his duty efficiently and properly, and he did not in any way lay himself open to the imputation, I think, of having abused that great right of the Crown.

639. *Chairman.*] It has been stated to the Committee that one of the effects of the right of challenge conceded to the prisoner, is that by means of it he is very often able to exclude from the jury the whole of the more respectable and more intelligent jurors; what is your opinion as to that?

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It no doubt may enable him to do that. I stated, when examined in 1873 before the Committee of the House of Commons, that I had noticed at the March assizes of that year, that several of what I would call the better class of jurors abstained from answering to their names. I noticed that upon the previous circuit, and I have observed the same thing occur since in some of the counties on my circuit. Now the panel at the assizes is made up of common and of special jurors; and if the men belonging to the class of special jurors will not attend to any large extent, and the prisoner has the right to challenge 20 peremptorily, he may exclude altogether from the jury box the men belonging to the class of special jurors. I think that ought to be prevented if possible. I have been considering in my own mind how that difficulty is to be obviated, and I think they have a plan in Scotland whereby that thing could be prevented; because in Scotland the juries are made up of common and special jurors in certain proportions. The Scotch Jury Act of 1825, in the 7th section, provides that, "In all criminal trials one-third of the number required, or if the number required cannot be divided equally into thirds, a number as nearly as can be to a third, more or less, at the discretion of the sheriff, shall be persons qualified as special jurors, and shall be distinguished in the return accordingly." And then the section dealing with challenges, provides that, "Each person at his trial shall challenge five of the jurors, and also the prosecutor shall challenge five of the jurors, without being obliged to assign any cause; provided always, that of the five special jurors to be chosen not more than two shall be allowed to be challenged by each person accused, or by the prosecutor." In Scotland the Crown have not the right to order jurors to stand by, and their number of challenges is limited to five; but I think to prevent juries being composed altogether of common jurors, some provision ought to be made like that which they have in Scotland, that a certain proportion of the jury should be made up of special jurors; and as regards that proportion, that the prisoner should be limited in his right of challenge; so that whatever number you would fix upon as the proportion of special jurors, you would be certain of having them on it. As they do not now in some cases answer to their names, or remain absent, they disappear entirely from the jury box; but if the law required that of the 12 jurors a certain proportion should be special jurors, they would have to attend; and if they did not attend there would be a fine inflicted upon them that would secure their attendance.

640. Would you have the same fine for a special juror as for an ordinary juror?

I would leave that to the discretion of the judge. Of course, if there was a great interruption or delay in public business by a juror not attending, the judge would always increase the fine in that case; and if the special juror remained away, and there was a delay in the trial, or an obstruction to the business, the judge would deal with that case by inflicting upon the party who brought it about a commensurate fine.

641. You think that some step of that kind is necessary, in order to obtain what we may call a leaven of the better class of jurors?

I think so. I have observed, in some cases, the better class of jurors not answering to their names, and then, the prisoner having that right of challenge, the number answering being less than what it ought to be, he is enabled to exclude the special jury element from the jury box; and I think that some means ought to be provided to prevent that being accomplished, and the plan they have in Scotland occurs to me as a precedent for it.

642. Does the system of alphabetical rotation, under which the jurors are now called upon to serve, work satisfactorily; in so far as it distributes the burden of service amongst the jurors upon the list?

Yes, it does. If the alphabetical selection is observed, a juror will not be called upon to serve a second time until all his other fellow-jurors have been called upon to do their duty and take their turn of service.

643. We have been told that sometimes considerable inconvenience arises from the fact that the names under one letter are so much more numerous than under

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under others, and that it happens that a whole jury may be made up of persons whose names begin with either one or two letters; have you known any inconvenience of that kind to arise?

I think cases in which that would occur would be very very rare indeed. It might so happen that on a particular panel you might get eight or ten names all beginning with the same letter; but that would be caused in this way, that the particular letter of the alphabet had a very large number of names in it, and when all the other names had been completely exhausted, there was a residuum of six or eight, or it might be ten, of those names in that particular letter that remained, and they would be put first upon the panel before the sheriff would begin at the letter A again. In my experience in Dublin I have never seen a case of that kind occur. I can only call to mind one case where I saw some eight or nine names commencing with the same letter (I think Murphy was the name) on the panel.

644. You were in the room, I think, when Mr. Bence Jones gave his evidence?

I was.

645. Did you observe a statement of his with regard to what happened when Lord Blackburn was entrusted with a commission for the trial of a particular class of offences, I believe?

I heard Mr. Bence Jones speak of that.

646. Are you aware of the circumstances to which he was referring?

I think it was a Special Commission in the end of the year 1847, or the first week of 1848, that went to the counties of Clare, Limerick, and Tipperary.

647. Do you remember how the juries were selected under that commission?

I could not say anything as to that; I only know of it from reading the reports of the trials of that Special Commission, and nothing appears in the reports of the trials about how the jury was made up.

648. *Lord Privy Seal.*] If your idea of securing the presence of a certain number of special jurors upon the common juries were to be carried into effect, it would require a very considerable attendance of special jurors, would it not?

I think not; at present, at every assizes, there are 48 special jurors summoned on the special jury panel; those are in addition to the special jurors, who are on what is called the petty jury panel. I do not think the plan I suggest would increase the number of special jurors that would have to attend, because at present you have 48 special jurors summoned for civil cases, and generally the special jury cases are very few; so that those 48 are brought to the assizes unnecessarily.

649. I presume in some cases the prisoner's counsel would get rid of the special jurors, so far as his right of challenge allowed him; you would have to allow for that process before the special jurors could be placed in the jury box?

If the proportion of the special jurors were to be a third or one-half, I would divide proportionately the number of challenges that a prisoner would be entitled to in a case of felony; if the proportion were six special jurors, I would allow him to have only 10 of his challenges as regards those, so that he could not get rid of having half of the jury composed of special jurors; in fact, I would make it a *sine quâ non* that one-half of the jury should be special jurors; and then, I think, if more care were taken in ascertaining information about the men on the panel, and the Crown solicitors exercised the rights as to standing by, the system would work very well.

650. Who are the officials responsible in that matter; who should be looked to to obtain this information?

Instructions have been issued by several of the Attorney Generals to the Crown Solicitors with reference to the exercise of this right. It is the business

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and the duty of the Crown Solicitor to exercise this right; and it is his business to make himself acquainted with the names of the people upon the panel, in order to see when and where, and how, it should be exercised. And the course that was pursued by Mr. Seed in the case of the Special Commission of Meath shows how it can be done. He has the police officers of the county and the constabulary there; they know everything about the men in a district, and their character, and they would have no difficulty or hesitation in giving him confidential information to enable him to see how the right should be exercised. The police in the district are acquainted with every juror and party in it; and they are the proper parties, I think, to give the information confidentially to the Crown Solicitor. And that is the way Mr. Seed obtained the information that enabled him to take the course he did at the Meath Special Commission of 1870.

651. Have you any personal experience of those parts of Ireland where the agrarian spirit, and the Ribbon combinations, and so on prevail?

They speak of the Ribbon combinations prevailing in the counties of Meath and Westmeath, and parts of the King's County.

652. Have you found the existence of those combinations telling much upon the conduct of juries?

I cannot say that I have.

653. Have you any experience in those parts of Ireland that have been most agitated of late; within the last 12 months we will say?

It is only lately that what is called the Land League agitation has become very active in the counties I am acquainted with. It was a good while before it became very active in the King's County and Westmeath; it has been for a considerable time active in the Queen's County.

654. Have you found that that state of things has had much effect upon the conduct of juries?

Well, on the last circuit there were only two cases that would appear to have been connected with it. One was a case of Boycotting in Westmeath. A man last Christmas wanted to get a pair of trousers made, and two tailors were prevented from making the trousers for him. The man, it was alleged, had prevented them. He was indicted under the Act of 1875, for intimidating those tailors with a view of compelling them to abstain from doing an act which they had a lawful right to do, namely, to make the clothes for this man. The jury acquitted in that case; but I think the witnesses themselves were as much to blame as the jury, because they would say that they were not intimidated at all, or were not prevented from making the trousers; that it was to the increased quantity of work that they had to do at Christmas that prevented them from making the trousers. That was one of the cases; and the verdict was found fault with; because persons that heard the evidence could hardly have a doubt that the tailors were prevented from exercising their free will in making the trousers; but when the juries come to deal with cases of that kind they must have evidence before them to act upon; and if the witnesses will come forward and attribute their action to a different cause from the real one, and do so upon their oaths, juries are placed in a difficult position as to how they are to act.

655. Earl of *Derby.*] In this case the witnesses were so effectually intimidated that they would not admit that they were intimidated?

The prisoner met the prosecutor with the cloth and asked him where he was going to, and he told him; and he said, "Well, I will make a wager with you that the trousers will not be made for you." The prosecutor went to tailor No. 1, who took his measure, entered it down in a hook, and took the cloth from him; and just as that occurred the prisoner appeared upon the scene, and called out the tailor's son, and had some conversation with him. The tailor's son came in and said something to the father, and the father then said: "I cannot make these clothes for you, and you must go away." Then the prosecutor went to tailor No. 2, and he took the cloth from him, but he never made the trousers; but the tailor came forward in the first place, and said that he was not intimidated in any way, and that the reason was that he had a great deal of work

656. *Lora*

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656. *Lord Privy Seal.*] I suppose it is the case that in former days in Ireland, under the old Jury Law, in turbulent times, and in turbulent parts, the same difficulties in the way of getting either evidence or convictions were found, that we have heard of to-day from Mr. Bence Jones?

The same complaints were made against the Act of 1833. There is a remarkable similarity between the complaints made against the Act of 1833, and those against the present Act. Those complaints were stated before the Select Committee of the House of Lords on an inquiry into the state of Ireland in 1839.

657. Was that Lord Roden's Committee?

Yes. It was Lord Roden's Committee.

658. *Lord President.*] I understood you to say that before Lord O'Hagan's Act there was a want of confidence among the people generally as to the way in which juries were struck?

As to the way in which the panels were made out by the sheriff. There were complaints made of the way in which the sheriffs, from time to time, had made out their panels.

659. Does the same feeling prevail now, or have they confidence in the present mode of striking the panels?

They have confidence in the way that the panels must be made out under the present system, because there is no discretion left to the person making out the panel as to putting on a particular person or leaving him off.

660. In what year was that case which you mentioned in connection with Mr. Seed?

The Special Commission to Meath was in June 1870.

661. That was under the old system?

Under the old system.

662. When there is a Special Commission sent down, is the same panel for the juries taken, or are there any special advantages, so that the sheriff may get better juries?

That was the only Special Commission on the Home Circuit since I became a member of it. The way that the panels were made out then was that the sheriff was at liberty to return any names he thought proper from the jurors' book. He was perfectly unrestricted; he might return any names from the jurors' book that were upon it; he was perfectly master of the situation, and he could take any names he wished from it.

663. That was under the old system, you say?

That was under the old system.

664. Can you remember any remarkable case on your circuit since Lord O'Hagan's Act came into force where there was a conviction on a difficult case?

There was a case in the King's County where a man was tried for abduction, carrying away a widow for the purpose, it was said, of marrying her against her will. He was reputed to be a very active member of some confederacy.

665. Can you remember the case which the late Chief Baron tried; almost the last case he tried at Maryborough; was that in your district?

It was. That was a case of a man named Moore tried in the Queen's County. It was a very long case; it lasted a couple of months.

666. There was a conviction in that case?

There was a conviction in that case for murder.

667. That was under Lord O'Hagan's Act?

It was.

668. In Dublin, would you say, as a rule, that there are very seldom cases where juries break down, or have broken down, even under the old system?

In Dublin, under the old system, there were both civil and criminal cases that there were faults found with, and there were complaints of the class of persons

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that were upon the juries. And I think the class of jurors that now appear in the box in Dublin is most remarkable; at the present sitting the special jurors are composed mainly of admirable men; they are first-class merchants in Dublin.

669. We heard a few days ago from one witness that he did not remember any case where a jury had brought in a verdict of acquittal against the evidence; can you confirm that?

That is before the Act you are speaking of?

670. Yes?

There have been acquittals in serious cases in Dublin. Of course, I feel a delicacy, as regards some of them, in expressing an opinion one way or the other about the verdict; but there was a remarkable case in Dublin, the trial of a man named Kelly, for shooting a constable named Talbot, in which he was acquitted of the murder.

671. He was found guilty, was he not?

He was found guilty afterwards of wounding one of the policemen who pursued him.

672. He was actually acquitted of the murder, was he not?

He was actually acquitted of the murder. He fired at one of the police, who went in pursuit of him; the policeman was wounded, and he was convicted at a subsequent trial of that offence.

673. At the first trial there was an impression abroad that the verdict was rather contrary to the evidence, was there not?

I was one of the counsel for the defence in the case, and, of course, your Lordship will understand the delicacy I feel in expressing any opinion; but I can say that I heard complaints over and over again of the verdict in that case.

674. Can you remember other cases in your district since 1869 where there have been convictions in capital cases?

Not on the Home Circuit.

675. Not at Tullamore, the case of the Shiels?

That case, I think, was under the previous system.

676. With regard to the fines, are the fines very often inflicted upon the jurors for not attending?

I think not. Since the Act of 1876, the panel at the commencement of the assizes is called over, and the judge is empowered to inflict a fine of 40*s.* upon any juror who does not answer; but I doubt if even those fines are inflicted. I think calling them over on the first day facilitates jurors absenting themselves; because when they are called over at the commencement of the business they answer, and they get credit for their attendance then, and they go away, and when the practical business of getting a jury to try a case comes on, they do not answer to their names, they having got credit for attendance. I think it would be a much better system, instead of calling over the panel and fining men for not answering at the commencement of the assizes, if the fines were only to be inflicted when they were absent at the real business of calling a juror for the purpose of having him sworn; then if he were away the judge should inflict a fine of more or less, according to the misconduct of the man in absenting himself.

677. Do not you remember a case in Dublin where juries have been called over on a fine of 50*l.*?

I have seen cases of that kind, but I doubt if those fines were ever levied.

678. What is the reason why it was so necessary; was it intimidation or sympathy with the case that made jurors absent themselves at that time, or was it from being called too frequently?

I would not say that their absenting themselves in Dublin was from intimidation or from sympathy with the case. It may be that a juror would absent himself because he did not like the interruption it would be to his business if it were a case that might take a week or ten days in the hearing of it.

679. Are

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679. Are the duties of jurors in Dublin now at all excessive?
I think the jurors in Dublin have to attend a considerable time. The Michaelmas sittings commence about the second week in November, and the jurors may be obliged to attend continuously up to the end of November. So with the sittings after Christmas and the present sittings. That is a heavy tax upon the jurors. In addition they have to attend the Commission Courts at Green-street, for criminal trials; and, I think so far as regards the Commission Courts in Green-street the jurors could be relieved of a great deal of their attendance there by instead of having two panels, one for the city and one for the county, having one panel composed one-half of city jurors and the other half of county jurors; and that as regards the sittings of the Commission Court in Green-street, which are six in the year, would reduce the demands upon the jurors for that court by one-half.

680. Lord *Inchiquin.*] Do you think that in the recent State trials the jury were free from all intimidation?
In cases that I have been engaged in myself as counsel I feel a delicacy in offering an opinion. I was one of the counsel for the Crown in that case.

681. You have no experience in Munster, have you?
No; in Munster I have only had experience of one case where I was acting in Limerick as deputy for the chairman of quarter sessions, who was ill and unable to attend.

682. In this case in Limerick there was no particular failure of justice that you are aware of, was there?
No. There was one case, which was a case of assault with a knife, in which, I think, the jurors found completely against the evidence. When addressing the quarter sessions grand jury, I called their attention to some two or three cases of assaults with the knife appearing upon the calendar, and I said that an effort should be made to stop the introduction of the use of the knife into the country, and to check it if possible. When the case came on to be tried, the solicitor for the defence adverted to those observations, and spoke to the jury of the risk there would be of the accused getting a very severe punishment, if there was a conviction; and he used against me the observations that I had addressed to the grand jury, and in that way, I think, influenced the petty jury to return a verdict of acquittal, through the apprehension that if there was a conviction there might be a severe sentence inflicted upon the prisoner.

683. It is in fact notorious that there is a general feeling of that kind in that part of the world, that there is that fear on the part of the jury in returning a verdict?
I know it struck me at the time as a very adroit use that was made of the observations that I addressed to the grand jury, about this practice of the use of the knife; and on subsequent occasions, when acting as deputy, I took very good care to avoid making an observation of that kind that might be availed of afterwards in the case of trials before a petty jury.

684. There is a sort of feeling among the jury, is there not, that more harm would come of conviction than by letting the man off?
Jurors are, I believe, in some cases, influenced by an apprehension that if they convict there may be a very severe sentence passed upon the accused.

685. Lord *Ardilaun.*] Do you know of any case in which witnesses and jurors have been canvassed previously as to attending, and as to their verdict?
With regard to the witnesses, of course the person who would require them would naturally take means to have them in attendance; but with regard to the canvassing of jurors, I do not think that in the part of the country that I am acquainted with, the practice exists.

686. Would you say that it is not so to any extent?
I never saw anything that would lead me to the belief that the thing existed; that applies to the six counties upon the Home Circuit.

 687. Have

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687. Have you heard of it existing in other places, or known of it?
I cannot say that I have.

688. Do you approve of uniting the city and county panels in Dublin?
I think it ought to be done for the purpose of diminishing the tax on jurors, as it would, by one-half; a precedent for it, I think, exists in London, in the case of the Central Criminal Court, where parts of several counties are combined, instead of having separate panels brought from various parts of those counties.

689. Do you know the proportion of cases brought for trial from the counties as against those at Dublin?
The great bulk of the local cases (that is, civil cases) are brought up to Dublin, to be tried in Dublin; and I think the number of what are called country cases, that have been brought up to Dublin, have increased considerably since the Judicature Act has been passed; there are civil cases now brought up to Dublin which ought properly to be tried down in the districts where they occur, and cases that would be peculiarly suited to a country jury, cases about agricultural matters, and about cattle, and country matters of that kind. A city jury, no matter how intelligent, have not that special knowledge that would be necessary for trying a country case. It would be just like getting a jury of farmers to try a mercantile case, instead of a jury of merchants. No matter how intelligent the merchants are, they have not the peculiar knowledge that would enable them to deal with a country case about cattle, or farming, or tillage.

690. Lord *Emly.*] As far as I understood you, your objection to diminishing the number of challenges of the persons charged with felony was that you thought it would be an interference with an ancient privilege?
Yes, it has existed from time immemorial.

691. At the time that the prisoner was given this number of challenges, were not all felonies capital offences?
They were.

692. Then do you not think that the reason why this very large number of challenges was given to the prisoner was, because his life was involved in the decision of the jury?
That may be the reason. It is very difficult to ascertain how it was that this right of peremptory challenge grew up or was given. I have endeavoured to ascertain how it grew up, but I have been unable to do so; and it may be most probable that it was because it was a question of the man's life in the case your Lordship suggests. It did not exist in cases of misdemeanour, until the Act of 1876 gave the challenge of six, and it gave it in civil cases. I think the giving of the peremptory challenge of six in civil cases was a great and most salutary reform.

693. Would you not consider that you were following more the spirit of the ancient law if you were to reserve the power of the prisoner to have twenty peremptory challenges to cases where his life was involved in the decision of the jury, and to take away the power except in cases in which the offence was a capital one?
Do I understand your Lordship to mean to take away the power of peremptory challenge altogether?

694. Of twenty of the number?
I see no objection to reducing the number of peremptory challenges in all cases of felony, except capital felonies.

695 Then you would propose, in all those cases, to give the power of challenge which is now given in the case of misdemeanours, namely, six?
I would give them more than six peremptory challenges, because the punishment for felony ranges up to penal servitude for life, which is just one degree less than the capital consequences; and to reduce the peremptory challenges in non-capital felonies to six would, I think, be too great a reduction.

696. What suggestion would you make then?

I would

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I would reduce it to twelve or fourteen. I would just make one observation with regard to this right of peremptory challenge. It is an advantage to have that for the man on his trial; there may be some objection, or some matter, which would render a juror unsuitable to try his case that would not amount to a legal ground of challenge; he might be a man who was in some way connected with the prosecutor, or had a prejudice against the prisoner himself, so that the right of peremptory challenge is useful to enable a prisoner to get rid of a person who ought not to be on the jury in that way.

697. I suppose in any case a prisoner could challenge a juror for good cause, could he not?
He could; but I refer to a case where the causes he would be relying upon would be such that the law would not regard them as sufficient ground of challenge to a man.

698. I think you said that you were in favour of amalgamating the city and county in Dublin for certain purposes?
Yes, I advocated that opinion so long ago as 1867 in a paper which I read before the Statistical Society in Dublin.

699. All the most important cases in Ireland are tried by Dublin jurists, particularly political cases, for they are almost all of them brought up to Dublin. What I want to ask you is this: do you think you would deteriorate the quality of the jury by that amalgamation; that is to say, do you think you would have as good a jury for the trial of those cases, and as fair and impartial a jury, if you amalgamated the county and city, as you have now merely in the city?
The amalgamation I speak of only relates to the commission court in Green-street, which is a criminal court altogether, and has no civil business. I would leave the city jury separate for certain cases.

700. Take the case of treason-felony?
That would be tried at the commission court in Green-street.

701. Would you have as good a jury for trying such a case if the city and county were amalgamated, as you have by having them tried before a city jury?
I think you would; because a large number of excellent jurors reside in the suburbs of Dublin, out in the county. A large number of residents in Rathmines, and that district, or at Kingstown, are a most excellent class of jurors. They would be available if the union took place between the county and the city. I do not think the union would in any way lead to the deterioration of the jury panels or the juries.

702. Lord *Penzance*.] I suppose the object of the peremptory challenge is to get a fair jury to try the prisoner, is it not?
Yes.

703. Do you think it of any less importance to get a fair jury where the punishment is something short of capital punishment; that it is in a capital case?
No; I think it is of the same importance.

704. If the object of the peremptory challenge is to get a fair jury, is it not equally important to get a fair jury, whatever the punishment, is in all cases?
It is; but we find that the law, for some reason or other, has drawn a distinction between the number of challenges that it allows, having regard to the nature of the crime that is charged.

705. There are differences; but you do not know the reason for those differences, do you?
I do not; but there must be some reason for the distinctions that have prevailed so long.

706. May I take it, as your opinion, that on the circuit on which you practice, there

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there is at present, in what I may call an agrarian case, anything like a reasonable certainty of getting a conviction, although the evidence may be plain?

I think there is.

707. You think there is a reasonable certainty of getting a conviction?

I do.

708. Earl of *Derby*.] Your experience is confined to the Home Circuit, as I understand?

Yes.

709. That is, to the counties round about Dublin?

Yes, six counties.

710. That, as a matter of fact, are not the counties in which agrarian outrages have been common?

There have been agrarian outrages in those counties, in Meath and in Westmeath, and in the King's County too. I cannot call to mind any in Queen's County of what you would call agrarian outrages. In Kildare and Carlow, in my experience, I cannot call to mind any of what I would call agrarian cases coming before the assizes in the county Carlow.

711. *Lord President.*] Was not the shooting of Mr. Warburton in the Queen's County an agrarian crime?

There was no trial in that case.

712. Earl of *Derby.*] In an agrarian case, or any other case, which excited much public interest, and where there was a good deal of public sympathy felt for the prisoner, do you think that a jury who convicted him would be safe?

I have not heard of any case in which any violence or any threat was used towards a juror, in consequence of the part that he took upon trials. I am a native of the King's County myself, and I recollect from my earliest time a large amount of criminal business in the King's County. When I was young the March assizes used to occupy a week or 10 days, and there were a number of cases in which there were convictions, capital and otherwise, and I never heard of any insult or injury being offered to the jurors in consequence of the part they had taken upon trials. It would be well known afterwards what were a man's views upon the trial. I have seen the jurors going home from attending at the assizes, and no insult or injury has been offered to them, and I have never heard of anything of the kind occurring. I have seen in recent times juries disagree in capital cases, and where it was alleged that they were 10 or 11 to one or two in favour of an acquittal, and that there were only one or two men who prevented a verdict of acquittal; but I saw those men going home through the street after they were discharged, and no notice taken of them; and I never heard in the King's County, or the other counties on my circuit, of any ill-treatment or insult or injury offered to a juror in consequence of the line of action that he took while acting upon the jury.

713. Then I think we may take it, from your evidence, that in your opinion the working of the jury system, so far as you know it, is fairly satisfactory?

I would say that, as regards the Home Circuit, it is as satisfactory as the previous system was. Of course there have been what I would call unsatisfactory verdicts on the Home Circuit since the present system came into operation; but they are not more than the number of unsatisfactory cases that there were prior to that Act.

714. But the previous system was considered unsatisfactory itself, and broke down, did it not?

It broke down in this way, in the difficulty of getting juries from the small number of persons that were qualified.

715. I will put it in this way: all that you have to say in defence of the present arrangement is that it is not more unsatisfactory than the system which it superseded; does that correctly represent your opinion?

I cannot say that it is satisfactory where you will find from time to time verdicts that you would not agree with yourself, or that I would not agree with if I were sitting as a juror. I believe that under every system of trial by jury, from

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from time to time, cases will occur, or will arise, where juries will return verdicts that are considered in some cases not to be satisfactory, and where there is a failure of justice.

716. Lord *Ardilaun.*] Did I rightly understand you to say, in answer to Lord Derby, that the system is not worse than it used to be, and that there is as much likelihood now of getting a verdict as there was under the old system?
That is my experience as regards the circuit to which I belong.

717. Since the Land League has become so prominent in Ireland, have not you found that that has had some effect upon juries?
No, I would say not as regards the Home Circuit; because there were very few cases in which the Land League would be called into operation as regards trials. On the last circuit I would say that there were only four of what might be called cases arising out of the Land League agitation. One was the case I mentioned of the tailors in the county of Westmeath; another was a case tried in Maryborough, a dispute about land which the prosecutor had taken, and the prisoner wanted him to give up. In the Maryborough case the jury convicted. Then there were two cases in the King's County; one was the case of a bellman who went round the town ringing a bell, declaring that any person who paid more than Griffith's valuation would be Boycotted. Another was the case of a gentleman, a Mr. Dudgeon, who came down to the King's County to collect rents; he had just previously prosecuted a man who had attempted to shoot him in the county of Longford; the man was tried at the last winter assizes, and was convicted; he came down to the King's County afterwards, and a number of persons collected round the railway station, shouting and hooting him, and he had to remain in the railway station during the night, until the crowd went away; he was protected by the police, and he could not get a car to go away in, and he had to walk five or six miles into the town. Those two cases, the case of the bellman, and the case of the unlawful assembly round the station, came forward at the last King's County assizes; they were cases which it was said were defended by the Land League; I do not know whether it is true, or not. The bellman was some months in gaol, and the parties in each case pleaded guilty, and were allowed out on their own recognizances.

718. I would ask you with regard to my former question whether you have come across any claims made before the grand jury for burning and malicious injury, which were afterwards traversed, and when brought before the jury were thrown out, owing to the action of the Land League?
No cases of that kind have occurred on the Home Circuit.

719. You have never come across a case of that description?
I have had cases of malicious burning before a petty jury, on the Home Circuit; since the Land League has been in operation I would say there has been no case of malicious burning that has been tried for the last two years, I think, upon the Home Circuit. There have been cases of malicious burning, but they were not traversed.

720. *Chairman.*] I think you have made out some returns from the Irish Criminal and Judicial Statistics, showing the proportion of convictions and acquittals over a period of years?
I have.

721. Will you put those in (*documents were handed in*)?
I have taken the table from the Criminal and Judicial Statistics from the year 1865 down to the year 1879, showing the proportion of convictions and acquittals.

722. Have you any other returns extending over a further period?
In Mr. Forsyth's "History of Trial by Jury," he gives the proportion of convictions and acquittals in Ireland from 1844 to 1850.

723. Lord *Penzance.*] That is for all sorts of offences, is it not?
For all sorts of offences.

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724. *Chairman.*] Will you put that Table in (*the Table was handed in*)?
Then from a Parliamentary Paper for 1856 I have taken out the figures showing the convictions and acquittals for the five years subsequent to those given by Mr. Forsyth.

725. Lord *Silchester.*] With reference to the answer given by you, that you were not aware of any molestation or injury to jurors who gave an unpopular verdict, was there not after the recent State Trial in Dublin, some demonstration against two or three of the jurors who were supposed to have differed from their brethren?
I saw in the paper an account of some row in front of the house of one of the jurors.

726. Then there was some molestation?
I do not place implicit credence in everything I see stated in the papers. I know nothing further of that than what was in the newspapers.

727. *Lord President.*] Has there been any difficulty in getting witnesses to come forward in the last two years or the last year?
Not to my knowledge.

728. Not on the Home Circuit?
Not on the Home Circuit, but there is a feeling expressed by people that there is a difficulty in getting witnesses in Ireland to come forward and give evidence, and that is not a thing of recent growth. It has existed a long time. I have heard it as long as I can remember.

The Witness is directed to withdraw.

Mr. JOHN BYRNE, is called in; and Examined, as follows:

729. *Chairman.*] You are, I believe, Collector General of Rates in Dublin?
Yes, for the City of Dublin, and for a large portion of the county.

730. And you have given particular attention to the operation of the Jury Laws in Ireland?
I prepared the Jurors' Lists for the City of Dublin; they originate with me.

731-2. Have you any particular matters of fact to which you wish to call the attention of the Committee?
My opinion is, that the exemptions from serving upon juries are too numerous to secure a fair trial; I have brought one of the jury lists; this is a copy prepared for the south dock ward (*the document is handed to the Chairman*); there are 15 such wards in the city. I find architects, civil engineers, and skilled persons of a very high class exempted by law from serving upon juries, which I consider is a great disadvantage in the trial of cases.

733. Under what statutes are such persons exempted?
Under the existing jury laws; the statutes of 1871 and 1876.

734. Are you prepared with any suggestion of your own as to the amendment of the law in respect to exemption?
I do not think any class ought to be exempted from service upon juries, except Peers, Members of Parliament, medical men, and barristers.

735. Lord *Penzance.*] Would you not exempt attornies?
Lawyers and attornies.

736. *Chairman.*] Publicans are exempted, are they not?
No; I think architects, engineers, pharmaceutical chemists, and persons of that class ought not to be exempted; I think their presence on juries would be a great advantage to the administration of justice.

737. Lord

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737. Lord *Penzance.*] They are not exempted, I believe, in England, are they?
I think the exemptions in England are very large.

738. *Chairman.*] Is there any list of ratepayers on which the fact of certain persons being exempted would appear?
It appears in the list before your Lordship; the exemptions are shown in the left hand column; it is only the person against whom no exemption is put that is legally liable to be called to serve upon the jury.

739. Lord *Penzance.*] Have you calculated the per-centage of exemption?
I have not calculated it, but my opinion is, that it is about a fourth of the entire list, or perhaps more than a fourth.

740. *Chairman.*] It may be an accident, but in the particular list you have been good enough to place on the Table, it seems to be a much larger proportion than a fourth?
That is the list of the ward that has the largest amount of exemptions, and this is the one that has the smallest amount (*another list is handed in*).

741. Your first suggestion is that there should be a considerable modification of the present exemptions?
A considerable reduction.

742. Have you any other suggestion you wish to make?
With regard to the principal objection to trial by a jury of twelve in Ireland, I may mention, and a great many agree with me, that for a great many years past it has been an unsatisfactory tribunal, owing to the nature of the verdicts being apparently against the evidence, and either acquittals, or disagreements, having eventuated in cases where the evidence to all appearance the other way was perfectly conclusive.

743. I must ask you, before you go further, whether you are speaking from your own knowledge of the conduct of juries in particular cases, or merely from general rumour?
I speak partly from my own knowledge of the conduct of juries, in general cases of the City of Dublin.

744. Would you state in what particulars the juries whose conduct you yourself have had means of watching, have acted in an unsatisfactory manner?
When persons have been placed on trial for assaults upon life, juries have disagreed, the evidence being apparently conclusive.

745. Would those be Dublin juries?
Yes.

746. Then what you have said would be limited to cases of a particular kind; you mentioned assault cases notably?
And cases of attempts to murder.

747. Whether the case arose out of agrarian matters or not?
The cases I refer to arose principally out of political matters; Fenianism, and like organisations. For instance, the case of Kelly; the general opinion in the City of Dublin among reasonable men was that the evidence was perfectly conclusive against him as to the murder, and yet he was only found guilty, subsequently, of an attempt to shoot a policeman, and he was the man whom the policeman pursued from the scene of the murder.

748. *Lord President.*] In what year was that?
It was some years ago; it is the Talbot case.

749. *Chairman.*] Can you remember the year?
I do not remember exactly the year.

750. Then would the failure of justice be explained by the fact that the jurors were afraid to do their duty, or that their sympathy was with the criminal and against the law?
I think

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I think both causes operate; I think in some of the cases the sympathies of some of the jurors were with the prisoner, and I think in others of the cases the jurors were partly afraid to discharge the duty impartially from the dread of personal consequences afterwards.

751. From the dread of personal violence?

Personal violence, or some damage being done to their property.

752. *Lord Privy Seal.*] Or their business?

In a city like Dublin that operates very considerably. If a man engaged in a retail trade in the City of Dublin becomes obnoxious to his customers, it interferes with his business, and, of course, he suffers considerably; and he will become obnoxious if he acts in the jury box in a way inconsistent with what the feeling of his neighbourhood is, no matter how impartially or how according to his conscience he may deliver his verdict.

753. *Chairman.*] Have you any suggestion to make for getting over these shortcomings on the part of jurors?

My opinion is that the state of Ireland would require that the present system of trial by twelve jurors ought to be abolished, and that there ought to be two systems established instead; and I suggest that the first system might be a trial of all cases by one judge and three jurors, the jurors to be balloted for from the list of persons in occupation of premises rated at not less than 50 *l.* per annum for upwards of the three years next preceding the preparation of the jury lists, and the premises to be one rating; there should be five votes altogether, the verdict to be fixed by a majority of the five votes of the judge and the jury; the judge to have two votes, each of the jurors to have one vote only. And the second mode would be the trial of all cases, civil and criminal, by two judges alone, who must be unanimous to fix the verdict; and I may mention that plaintiffs or prosecutors ought to select, in bringing their case, one of the above systems in the first instance, for the trial of the case; but the defendants or the prisoners to be at liberty either to adopt the one named by the plaintiff or prosecutor, or to choose the other, in which latter case the defendant's or prisoner's wish should be paramount. I think one or both of these systems would be a far more satisfactory system, and eventuate in arriving at the truth, and would be much better than the present chance system of trial by juries as at present composed and inclined. I myself would infinitely prefer, if all my property were about to be attacked by action, or my life were at stake for an offence, either of those modes of trial, to the present mode of trial by jury of twelve in any part of Ireland.

754. Did the Acts of 1873 and 1876, by which the juror's rating qualification was raised, make a considerable change in the class of juror admitted to the box?

Not very considerable.

755. I suppose the city jurors are generally tradesmen?

A great portion of them; a large number are merchants and wholesale dealers. There is a disinclination at present, on the part of the more respectable portions of the panel, to serving with those of a lower class upon the same jury. For instance, a short time ago the chairman of the Great Southern and Western Railway was called to serve upon a jury, and upon the same jury was called one of the engine drivers of the line; and when a panel is summoned, a great many of the more respectable class of jurors, although in court, do not answer to their names, and they allow the jury to be got from the panel of persons of a very low class indeed; they evade service with the persons of a lower class by appearing in court, and perhaps at the first call answering to their names, or not answering, subsequently as they may deem expedient, and thereby escaping service with jurors of a lower class upon the same trials.

756. *Lord Privy Seal.*] Then you think it would be very important to secure the attendance and service of those jurors of the upper class?

I think they are far more likely to be independent in rendering their verdicts than persons of the lower class.

757. Of course, in any case they are sure not to constitute a jury as a whole, but you think their presence even in small numbers would be of importance?

I think

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I think their presence, even in small numbers, would be of consequence, but I think their presence in large numbers would give far more confidence to the public at large.

758. Have you any suggestion to make as to the best mode of securing the attendance of those jurors?
I think the mode of securing their attendance would be by reducing the number necessary to render a verdict. I think in a jury box, whilst a case is in progress, that it is almost impossible for 12 men to compare notes upon the evidence with each other as it passes before them, whereas if you had a jury of three they could converse and compare their opinions with the statements of the several witnesses, and arrive at a more satisfactory conclusion than a greater number.

759. My question was much more conservative than that; I did not contemplate any such radical change, but supposing that we stick to 12 jurors, have you any suggestion to make as to the best mode of securing the attendance of jurors of the class you speak of?
I think the best mode of securing their attendance would be to raise the qualification.

760. How would that secure their attendance?
A larger number of them would, in my opinion, answer and be willing to serve if it were not for the number of low class jurors that are likely to be called upon the same trial with them.

761. You mean that would save them from the objectionable companionship with their social inferiors?
Yes, I think so.

762. Do you think that is a reason which deserves any respect?
I think it is a sentimental reason, and one which in the interest of the public they ought not to entertain; but we have to deal with human nature precisely as it is, and what we ought to arrive at is, if possible, to get a satisfactory jury without doing violence to those feelings of human nature that we cannot out-root, although we may not approve of them.

763. Suppose we take the line of not humouring these feelings which you admit are not worthy of admiration, are there any means of enforcing the attendance of those gentlemen?
Oh yes; if they were fined they would be obliged to attend, but although fines are imposed by the judge for non-attendance, when the panel is called, they are remitted subsequently for various reasons.

764. Lord *Penzance*.] But they are remitted by the judges, are they not?
They are remitted by the judges. A statement is made, or an affidavit framed of some sort or other, and the judge sees reason either to reduce the fine or remit it altogether. In fact, I believe, the fines are very seldom enforced.

765. *Lord Privy Seal*.] Could the judges enforce the attendance of jurors of this class under their present powers, if they choose to use their discretion?
They could.

766. Then that would require no change in the law?
No so far as that is concerned.

767. You think it would be possible if the present powers possessed by the judges were used, that those jurors could be brought into the jury box?
I think if everybody summoned as a juror were fined a substantial sum, and it was known that that fine would be certainly inflicted, the juror would attend in the box unless he imagined that his interest or business would be damaged by his having any connection with the trial; to the extent of the fine; in that case he might put his hand in his pocket and pay the fine. I know in some of the political trials there are jurors in the city of Dublin who would rather pay 50 *l.*, or even 100 *l.*, than incur the consequences of serving upon the jury.

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768. Those would be exceptional cases I suppose?
Very exceptional.

769. *Lord President.*] Do you consider that the service of jurors in Dublin is excessive?
I think too many are summoned for the trials.

770. How often does the summons come in the year?
Very frequently. The Recorder sits four times a year; the court of commission for trials of prisoners by the judges sits four times a year; then there are all the civil trials of the Four Courts; in fact the labours of the Dublin jurors are very extensive.

771. How often is a juror summoned during the year in Dublin?
When I served as a juror, before I held my present appointment, I have been summoned three and four times in the year, because the service that you have in the civil courts does not count as service in the criminal courts; when the criminal courts sit you are summoned without reference to your service in the civil court.

772. That may be one of the reasons why jurors are rather reluctant to come forward and attend when they are summoned, may it not?
They endeavour to avoid, of course, spending unprofitable time from their business as much as possible, and that is very natural.

773. Lord *Inchiquin*] If you had this satisfactory attendence that you want to get of the respectable jurors, do you think it would be sufficient?
No; you would still have disagreements of juries in the face of the most reliable evidence.

774. In fact you think there should be some change in order to make the law respected?
I look upon it as next to impossible to expect an unanimous verdict from the present jurors' lists in the City of Dublin in any case in which either religion or politics is concerned.

775. You made some suggestion just now about an alteration of the jury, but do you not think it would be more satisfactory if there were a commission of judges to try the prisoners in certain cases than that there should be a sort of combination of jury and judge?
I do. I suggest as one of my modes of trial two judges without a jury; in fact I think the law is very defective in not fixing upon the judge some responsibility in regard to the rendering of the verdict. I think he ought to have some influence by giving him a number of votes or otherwise in relation to the rendering of the verdict; I do not think that the verdict of 12 ought to be held any longer (in Ireland at all events) to be unanimous. I think if the number of 12 is to be retained that a majority or two-thirds ought to carry a verdict.

776. Do you think that if you had a majority of the jury that would be a satisfactory alteration?
I would rather have two-thirds, that would be eight out of 12. It is only a difference of one between that and seven to five.

777. There would be a certain amount of invidiousness in voting, would there not?
At all events it would enable verdicts to be rendered in cases in the direction of the tendency of the evidence.

778. Lord *Ardilaun.*] You said fines were very seldom enforced by the judges in Dublin?
As a general rule; I think where 10 fines are inflicted, nine of them are not enforced.

779. Do you say that from personal knowledge; I ask you because I have suffered in the other direction?
They did not spare your Lordship, but I have known several jurors who were fined, and got the fines takenoff for every slight cause.

780. For

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780. For insufficient cause, do you think?
I would not like to say insufficient, but it was done upon their appearing in court, and making excuse to the judge that they were detained, or that the summons went astray, or that they had forgotten the day or something of that sort; then the judge has said, "Well, we had a jury and got through the business, and you will not do it again."

781. Are you aware that jurors in the City of Dublin have been intimidated or injured in their business?
Yes, it is a matter of very great notoriety. Upon a late trial there were two persons named Faulkner upon the jury, and it was given out by some authority that one of those men was a dissentient in relation to the acquittal of the prisoner, and a mob assembled opposite the house of the wrong Faulkner in Grafton-street, and it was with great difficulty that the police force of the district could disperse them.

782. If they give a proper verdict do they know that their business would probably be "Boycotted," and they in that way injured?
There is that feeling in Dublin to a very considerable extent.

783. Do you remember the case of a certain alderman which recently occurred, and which might be applicable to this question?
I do; that feeling is very prevalent in Dublin, and has been for some two or three years past.

784. Is it so especially in the case of those who are connected by business with the provinces?
Yes, and I think that that alderman would pay a fine of 100*l.* cheerfully to avoid being called upon a jury.

785. You think that that intimidation is sufficient to be very injurious to the formation of juries in Dublin?
It renders the trial by jury in Ireland a perfect farce.

786. Lord *Penzance.*] With reference to what you have been saying about the verdict of the majority, it was stated to us the other day that, owing to the better class of jurymen being in a minority, generally, even where they could not direct the verdict in the right direction, they still were able by standing out, to prevent a verdict of acquittal, so that the person would have to be tried again. Have you contemplated, as a possible result of giving a verdict by a majority, the fact that you would enable the majority, which would be composed of those who would be the least desirable class of jurymen, to have it all their own way?
Well, I have contemplated that, but I think that if that were to operate to the same extent that the principle of unanimity operates in defeating justice at present, the authorities would very soon step in and make an alteration in the law, such as I suggest.

787. What is that?
That is, to have all cases tried before two judges, without a jury, and if the Legislature is not prepared to abolish the trial by 12 and adopt this system, or one of the two systems which I have indicated, I think that the Lord Lieutenant in Council ought to be at liberty when a district is proclaimed, and when the Executive of the country has no confidence in obtaining verdicts from juries, to bring into force one of those modes of trial, in order that justice should be administered in districts where it is impossible to do it through the medium of a jury under the system requiring the unanimity of 12 for a verdict.

788. Of the two plans you prefer the one of trying before two judges?
Before two judges without a jury, making a verdict dependent upon their unanimous opinion; and I think that would be a vast improvement in the proclaimed districts in the enforcement of the law; in fact, at present the people have an idea that the law is a play toy, and that they need not obey it unless they choose.

789. Earl of *Derby.*] I understand you would lessen the number of exemp-

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tions from service on juries, assuming trial by jury to be retained in its present form?

You would secure a larger number then of the better classes on the panel.

790. Do you think the quality of jurors has been materially impaired by the number of exemptions granted to persons of the more educated class?

Yes, considerably impaired.

791. Then we may take it that the injury has been greater than is measured by the mere numbers exempted?

Very much greater.

792. In fact, you think that the brains have been kept out of the jury box?

Yes; the fact of a skilled man being on a jury would be of very great consequence, because he might prompt the putting of questions to a witness which would not suggest themselves to a man of less intellectual calibre.

793. Do you think there would be any strong aversion on the part of the more educated classes to serve more frequently than they do if that were altered?

They might be; but I think that that sentiment ought not to be ministered to, because if the more educated classes have occasion to bring their cases before juries, why should one class be burdened with the business of deciding upon those cases without a corresponding assistance being derived from the educated classes towards the settlement of the cases arising on the other side.

794. I forget whether you have given us your opinion upon the number of peremptory challenges allowed to a prisoner; do you consider the number excessive?

Not being a lawyer I do not know much about that. I do not think, as a general principle, that a person who is accused of a crime should have too much voice in the choice of his own judges. It appears to me that the system rather tends to partiality; I do not think that a man ought to be the chooser of his own judge

795. *Chairman.*] I think you said that you were in favour of raising the rating qualification?

Decidedly.

796. Have you considered at all how that would operate in the counties. The rating qualification of 40 *l.* is a high qualification in many parts of Ireland, is it not?

It is.

797. And if you were to raise it much above 40 *l.* would you not virtually have no jurors left at all?

I think you would have jurors, and you would be certain to have jurors of the better class. The jurors of the counties in Ireland, in times like the present, are very much disinclined to serve, especially the better class of jurors; and in point of fact they incur a considerable amount of personal annoyance and perhaps a considerable amount of personal danger from serving upon juries if they render verdicts according to the evidence.

798. Do you suggest any particular amount for the rating qualification?

I think it ought not to be less than 50 *l.* in the city of Dublin for a juror of any class; and it ought not to be less than at least 30 *l.* in any county in Ireland for any juror.

799. But it is 40 *l.* now in the counties, is it not?

Yes, but there is an element from the jurors resident in small towns brought in at a lesser rating, which considerably deteriorates the panel; and the classes most adverse to the administration of the law in Ireland are the residents of the small towns.

800. Then you would not interfere with the rating qualification as it now stands in the counties?

Not in the counties, but I would have the towns and the counties the same; I would not allow the dweller in a house of a smaller value in town than the occupier of a farm in the country to be a juror.

801. Would

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801. Would not a 40 *l.* rating qualification in a country town be an extremely high qualification?
It would get you an extremely good class of jurors; it would be high, of course.

802. *Lord President.*] Can you tell us at all the proportion of Protestants to Roman Catholics on the jury lists in Dublin?
I think there are perhaps about four or four and a half to one.

803. Four and a half Protestants to one Roman Catholic, do you mean?
No, the other way; four and a half Roman Catholics to one Protestant.

804. Are they pretty well distributed throughout the list among the richer and the poorer classes?
No. There are several wards in which the Roman Catholic preponderate perhaps 90 per cent., and there are one or two of the wards in which the Protestants preponderate, perhaps about 60 per cent. Of the two wards, the lists of which I have produced to the Committee, one is the South Dock Ward, in which list the Protestants preponderate very considerably, and the other is the Usher's Quay Ward list, upon which the Roman Catholics preponderate very considerably.

805. Do the Roman Catholics preponderate in the richer or the poorer wards?
In the poorer wards. There is another matter I wish to allude to before I close. Some complaints were made with regard to the non-attendance of persons who were summoned, and to the fact of it not being possible to procure their attendance. The reason of that I wish to state. Baron Dowse made some complaints about it, and Judge Barry also made some complaints about it, that out of a panel of 90 summoned, there were only 75 or 72 possible attendants. That arose in consequence of many either having died, or having removed from the premises, or gone away from the city altogether. The lists are prepared by me, and by clerks of unions all over Ireland similarly each year, on the 1st of August, and those lists are prepared for the purpose of having them revised before the Revising Barrister at the October Sessions; but after being revised the list does not come into operation for service until the Hilary sittings of the succeeding year. Therefore, a vast number of changes occurs between the time it is prepared and revised and the commencement of the succeeding year, and to the close of the succeeding year; that is about 18 months from the date of its preparation till the time of its being used has ceased, and in that period a vast number of changes occur which, of course, we can have no control over, and cannot foresee. I made a suggestion lately to the Lord Chancellor of Ireland in a letter, a copy of which suggestion I also sent to Baron Dowse. Lately that inconvenience was felt so much that the Recorder of the city of Dublin went into the revision of the lists in April this year and struck off the names of persons who had died or removed, and consequently ceased to be qualified, or had placed themselves beyond the reach of the sheriff's summons. The suggestion which I made is this: Twenty-one days before any jury shall be required to be summoned, the sheriff shall transmit the proposed panel to the Collector General, or to the clerk of the union, as the case may be, for report as to the probable or possible attendance in court of the persons named therein at the forthcoming sittings; and the sheriff shall add to the panel, when so returned to him with such reports, one additional name for every person reported by the Collector General or the clerk of the union to be dead, or removed, or otherwise incapacitated to attend at the said sittings; and the clerk of the peace shall then amend the list of jurors according to such reports by striking out the names of all persons who have so died, or removed, or are otherwise incapacitated to attend. You see that when a juror dies between the preparation of the lists and the time he is required in court, he is summoned under the existing law, and the sheriff, having no power to exempt him, issues the summons as if he were alive session after session, until the end of the time during which the list is to be used. This is the mode I propose for revising the list, making it a self-acting revision continuously.

 806. How

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806. How would you give the sheriff the power of selecting those names which have to be supplied?
He selects them from the panel in the same rotation as that in which he is obliged to select the existing names from the list.

807. Lord *Penzance.*] He makes up the list with good names?
Precisely in the same mode of succession as that by which he makes out the panel originally.

808. *Lord President.*] It was suggested, I think, that there should be a quarterly revision to meet the case you refer to?
The course, I suggest, would be a self-acting revision for every period at which the court was sitting.

809. You think it better and more simple than the other?
Far more effective, because the Collector General and so on, through the country over which the clerks of unions have control, could within 48 hours revise the list of any panel.

810 Lord *Ardilaun.*] It was suggested here the other day that the names of those jurors who escape service in any ways should be placed at the top of the next list, so as to ensure their taking their share of the service; what do you think of that suggestion?
I think it a very good suggestion if the present system is to be continued, but I think the present system ought to be altered, so that every juror summoned upon the panel shall be obliged to attend, and shall attend, except under a substantial penalty, which shall be inflicted. I think the power to remit the penalty ought not to be unlimited in the discretion of the judge, because I am aware that the judges sometimes are imposed upon by flimsy excuses in relation to the remission of penalties.

The Witness is directed to withdraw.

Mr. T. NEWENHAM HARVEY, is called in; and Examined, as follows:

811. *Chairman.*] What is your profession?
I am a printer.

812. You have given considerable attention to the Irish Jury Laws?
I have given very careful study to the subject for the last three years.

813. Have you held any position (official or other) which has given you opportunities of forming a judgment?
I have only been a juror; I have been on the jury lists for a number of years, and as a juror who is harrassed with incessant service, I gave great study to the law. I have no official position beyond that of the secretaryship of the Waterford Jurors' Association, which is an honorary position, and the duties of which are to convene meetings, receive subscriptions, and carry on the business. With reference to the county qualification, I think it is too low; not only the 40 *l.* for the land, but also the 10 *l.* for the house. Any house in the county of 10 *l.* valuation, qualifies a county juror. I am strongly of opinion, from seeing jurors in the box, that the 40 *l.* land and the 10 *l.* house qualification are altogether too low. I have seen men in the box, who are scarcely above the status of labourers, and they are exceedingly ignorant persons. I suggest that the qualification should be raised to 50 *l.* for land and 25 *l.* for a house. I also wish to draw attention to the great hardship under which very poor jurors labour under the present system. A man who holds land of the value of 40 *l.*, or occupies a 10 *l.* house, is often exceedingly poor, and in our county he has to go sometimes a distance of 40 miles to the assizes, to stay there a week, and then to travel back, and that is a very great tax indeed upon him. Some time ago a case occurred which caused considerable sensation; it was a case in which some of the jurors were summoned from the far end of the county, and did not attend. They were fined, and taking

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taking no notice of the fine, the sheriff was directed to seize their goods in order to pay the fine. He went to their places, and found that they were in so poor a condition that they had no goods to seize. He applied to the judge for instructions, and the judge said that they should be sent to prison for not attending to the matter. As a matter of fact they were not imprisoned; there was such an outcry raised in the country that the idea was given up. They are an exceedingly poor class of people who are called to serve under the existing system.

814. Is that poorer class admitted under the borough qualification?
No. The Jurors' Qualification Act expired two years ago, or a year and a-half ago, and has since been twice renewed by Expiring Laws Continuance Acts. The 39 & 40 Vict. c. 21, raised the qualification in all the counties in Ireland, except three, to 40 *l.* in respect of lands and tenements, and 10 *l.* for houses; in the case of the three counties, it is 40 *l.* for lands and tenements and 6 *l.* for houses.

815. Is it the 40 *l.* county qualification that you object to?
The county qualification is 40 *l.* and 10 *l.* I have not spoken so far of the town or city qualification at all.

816. It is the latter qualification you consider too low?
I consider both too low, because the 40 *l.* qualification for land, you must remember, is much nearer to the actual letting value of the land than it is in the case of the house. Houses in Ireland are usually rated at about one-half the letting value, while land is rated at a little under the letting value; that is to say, a farm rated at 40 *l.* would perhaps fetch 50 *l.*, while a house rated at 20 *l.* would perhaps fetch 40 *l.* There is a clause in one of the Acts which states, that if a person lives 15 miles from the assize town he may be free every alternate time the assizes are held, but that is inoperative owing to the ignorance of the class of jurymen summoned. And furthermore, that clause, to be operative, requires that the juror shall apply to the judge in open court and state his case; and the jurors of that class are altogether too timorous to take any such forward step. I tested that at the recent assizes. In order to do so, I sent a letter to the Waterford paper, calling the attention of jurors to this clause, and waited to see if any one would take advantage of it, and I found that there was no single application made to the judge. Furthermore, I think it probable that many of these jurors cannot read and write. The Act states that such persons are exempt, but the Act does not state that the poor rate collectors, or anybody else, shall inform them of such clause, and they, being ignorant of the fact, simply suppose, when they get the summons, that they must go. There is no regular or official means of bringing the knowledge of the fact under their notice.

817. Are not all illiterate persons struck off the list on the occasion of its revision?
There is no means of testing the matter. The poor rate collector goes and collects the rates. If the tenant says, "I cannot read and write," he reports it, but the tenant in many cases pays his rates to the landlord, and the poor rate collector does not see him at all.

818. What you mean to say is, that the revision of the list does not afford sufficient opportunity for determining whether a juror is or is not illiterate?
I do. I say that, in my opinion, there ought to be some emphatic clause, requiring the poor rate collector to make more investigation than at present into the condition of the persons who are put on the jurors' list of exemptions and disqualifications. At present, for an ignorant person, living 10 miles from a town, it is almost impossible to know what are the exemptions and the disqualifications. Another suggestion I would make with reference to county jurors would be that, in the case of those who come a considerable distance, and who are of a low class, such a sum of money should be paid to them for attendance as might seem reasonable under the circumstances; that I think would be only fair. With reference to the city jurors, the case is, in my opinion, quite the reverse; the qualification is too high to secure a sufficient number of attendants. Some years ago, indeed, up to the year 1878, the law was quite misunderstood in

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in Waterford, and many of us were harassed to a very great degree by the incessant jury service to which we were subjected. We used to have six services every year regularly, and if we happened to be absent on any occasion we were fined or put down for a fine; I do not say that the fine was always inflicted, but the sub sheriff grossly misunderstood the law. A certain number were always summoned, and a certain number were wholly exempt from service. The idea prevails among some persons that under Lord O'Hagan's Act there should be an equal number of each letter of the alphabet summoned on the jury; it is not confined to Waterford; we have upset it there. The result was that in letters where there were only two or three names such persons had to serve on every jury without exception. I prepared a diagram which I laid before the judge at the time efforts were made to alter the system. It does not give the whole position of the case, because in J., V., and N. the jurors had to serve every time, whereas others did not serve at all. In consequence of this incessant service I was led to examine the Jury Acts very carefully. We then got up an agitation upon the subject; I applied to the chairman of quarter sessions and he thought that the sub-sheriff was right in what he was doing. We then employed counsel and brought the matter before the judge; the judge upset that decision; that was a case which Mr. Molloy spoke of. I have no doubt that that misunderstanding of the law still prevails in some other parts of Ireland as well as in Waterford.

819. But that is simply a case of misinterpretation of the Act of Parliament by the officials?

It is, but such misinterpretations should not, in my opinion, be allowed to exist. The Acts are still to a certain extent irregularly carried out. I know various little matters in connection with the subject which I can scarcely state to your Lordships. At the time I refer to we prepared a petition to Mr. Lowther, which, I think, you have had a copy of.

820. Perhaps you had better put one in (*A copy of the document was handed in*)?

May I give a short account of its objects?

821. Yes.

The first point of it was as to the lowering of the qualification in consequence of our having to undergo so much service. The second item of it shows that only one portion of the qualification is attended to, that is the occupancy qualification; there are a number of qualifications set forth in the Act, such as leaseholders and freeholders and members of harbour boards. I have asked the clerk why such names do not appear, he says he cannot find them, and there is no power under the Act to enable him to take steps to discover them. The third point is of no consequence. The fourth relates to that which is hardly a matter, perhaps, for Parliament to consider; it refers to the exceedingly hard way in which jurors are treated; I may say they are treated like cattle almost, there is no place for them to sit down in, they have often to stand in the passages, and the fatigue is very great. My experience of jurors is, that they do not object to serve upon juries, but they very much dislike waiting day after day and not being called, which is at present very frequently the case. The other clauses of the petition relate to matters which are of less consequence. The poor rate collectors consider it is no business of theirs to make any inquiry as to the various persons from whom they collect poor rates. In consequence of a very gross case that came to my knowledge, I brought the question as to the duties of poor rate collectors before the chairman at the revising court, and he refused to give any opinion as to whether it was their business or not, so that I had no means of taking the case further. The case I thought so gross was where a man had a holding first in one district and then in a second; having changed from one to the other, he was kept on the list for the two holdings, and put on the jury for years, although neither holding qualified him for being on the jury. With reference to the condition of the jury, owing to the present qualification, two-thirds of the jury in Waterford are liable as special jurors, and only one-third as common jurors, and the Act is so framed that the common jurors, who are not special jurors, are all, as I may say, consumed at the quarter sessions, and only the special jurors are left for attendance at the assizes, which, of course, produces a higher

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a higher class of jurors, but it is not pleasant for the jurors of that class. I think it would be very important that the sub-sheriff should be known to understand the law before he is appointed to his place; and I have for some time felt that there should be an inspector sent round regularly to oversee the doings of those officials in the county towns, for I have strong reason to believe they are exceedingly loosely done. The Dublin Jurors' Association brought forward that suggestion some time ago, as I am informed, but I was not aware of it until yesterday.

822. Have you seen a memorial which was forwarded by the Dublin Jurors' Association?

No, I have not. I think it should be the interest of the clerk of the peace or the clerk of the union to have as many acting jurors as possible. At present he is paid by the number of persons on the list, whether exempted or not. I heard Mr. Byrne's evidence, and I may state that with us the number of exemptions is nearly as great as the number of persons serving. We have about 350 on the list, and about 140 are exempted for various reasons. It is no person's business to see whether the exemption claimed is accurate, so that persons obtain exemption sometimes when they are not properly entitled to it.

823. Are you speaking of Waterford jurors?

I am speaking of Waterford City jurors exclusively. For instance, a person who was a doctor in the army, and left 10 years ago, puts himself down as a physician, when he is not practising at all. With reference to Mr. Byrne's suggestion of reducing the number of the jury, I say I agree with that very heartily. I think he went too low, but if the jury could be reduced to seven, five to carry the verdict, I think it would be a very great improvement; with reference to what was said about having heavier fines, I would ask the Committee to consider that such fines would be very much inoperative owing to the ingenuity of the Irish character. People would put the houses which they occupy down in the name of a female; I have known such cases, and there would be a hundred different ways of shifting the responsibility attaching to house property, consequently those best qualified to serve, the ingenious persons, would be most likely to escape.

824. *Lord President.*] Are you a magistrate for the borough?

No, my Lord, I am not.

825. Lord *Silchester.*] Do you find that your fellow jurors discuss questions solely on their merits, or are they apt to be led away by other feelings?

With a city jury, we have rarely any question that is not fairly considered. We have winter assizes for which the prisoners are drawn from four counties; there the cases are sometimes of agrarian character, and are not always properly dealt with, but in the ordinary city business I never knew a case not fairly and fully considered. I may state that our part of the country is peculiarly quiet. We have a very small leaven of the agrarian element.

Adjourned till To-morrow, at Twelve o'clock.

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Die Veneris, 24° Junii, 1881.

LORDS PRESENT:

Lord President.	Lord Tyrone.
Lord Privy Seal.	Lord Inchiquin.
Duke of Marlborough.	Lord Silchester.
Earl of Derby.	Lord Emly.
Viscount Hutchinson.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. STEPHEN HUGGARD, is called in; and Examined, as follows:

826. *Chairman.*] I believe you are Clerk of the Peace for the County of Kerry?
I am Clerk of the Crown and Peace.

827. How long have you held those offices?
I was appointed Sessional Crown Solicitor of Kerry on the 22nd of March 1875; I was appointed Clerk of the Peace for the county in March 1878, and I was appointed Clerk of the Crown and Peace in April 1880.

828. And the preparation of the jury lists, I believe, forms an important part of your official duty?
It does.

829. Would you state to the Committee from what class the petty jurors are usually drawn?
I find that there are upon the jurors' book for the present year 1,067 names, and that number includes 231 who are also on the special jurors' list. The difference between the 231 and the 1,067 is mainly composed of tenant farmers and the occupiers of houses in towns and villages.

830. Has the class of jurors undergone a considerable alteration since the Act commonly known as Lord O'Hagan's Act?
In the position of life of the juror there has been a very great alteration. In former days, under the Act of 3 & 4 Will. 4, the only qualified persons were men who had 10 *l.* a year derived from fee simple estate, or fee tail, or who held for a life or lives, including perhaps their own life; secondly, men who had a clear profit out of lands amounting to 15 *l.* a year held for a term, which originally consisted of 21 years.

831. You need not go very minutely into that; the Committee have had evidence as to the qualification?
I think it will be important for me to state it for one reason, which I will allude to in a moment. The reason why I allude to the qualification is, that it was one of the grounds upon which the old system was discarded, and the new system adopted. Perhaps I do not make myself quite clear, but I intend to show, in a few moments, that it was necessary to make some alteration in the system on account of the qualification.

832. I will ask you the question generally; in your opinion it was absolutely necessary to make some alteration in the qualification which existed prior to 1871?
I think

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I think so, and for a different reason from that which I heard given yesterday.

833. For what reason?
It arose in this way. The Act of 1833 had a schedule appended to it in which was to be set forth the qualification of the jurors; in one column the qualification of freeholder, in another column that of leaseholder, and in another column that of occupier of houses; and there was no means known to the law by which the collectors of the grand jury cess, who were the persons upon whom the duty was thrown of furnishing the names, could accurately have found out the various qualifications, or in other words, the title by which men held their lands; so that these lists were always made out more or less by guess work. A collector would say to himself, "A. B., living over the way, is a freeholder;" "A. B., living on the next farm, is a leaseholder."

834. Lord *Silchester.*] These qualifications have been extinguished by the recent Act, have they not?
They have.

835. Earl of *Derby.*] Nobody knew who was qualified, and who was not, under the old system, I suppose you mean?
That is one of the reasons why I say it was necessary that the system should be abolished, because nobody could, with accuracy, say who were qualified or who were not qualified; and the 20th section of the statute made it a good cause for challenge if a man was inaccurately described as to his qualification.

836. *Chairman.*] You have had considerable opportunity no doubt, of observing the conduct of petty jurors during the last few years?
I have.

837. Have you formed any opinion as to the manner in which their duties are discharged?
At first, when the change in the jury system took place, it worked unsatisfactorily, because men were brought into it who were unacquainted with their duties. There was an improvement afterwards, but since the commencement of the agitation, which now exists in Ireland, there has been a visible change wherever cases had to be tried connected with agrarian disturbances of any nature.

838. Should you say, with regard to such cases, that under present circumstances there is a reasonable prospect of the jury performing their duty in an independent and fearless manner?
I do not think that there would be a reasonable prospect.

839. And would that be on account of fear of the consequences which independent conduct might bring upon them, or would it be on account of a general sympathy with the accused person?
It would be on account of a general sympathy, more than from any other reason.

840. The petty juries being as you have told us largely composed of small tenant farmers?
Precisely.

841. I think you said that, besides the small tenant farmers, there would probably be some small tradesmen belonging to the country towns?
There would.

842. Such persons, I suppose, are very closely connected, and mixed up with the agricultural population?
They are much more dependent upon the agricultural population, than the agricultural population are upon each other.

843. And therefore, if there were any widespread prejudice existing in the agricultural population, you would expect to find the same prejudice, at least as intense, in the minds of the inhabitants of the towns?
I would.

844. Are

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844. Are you able to state to the Committee any cases, within your own experience, which you consider illustrate what you said just now?
There were cases tried at the last Tralee Assizes before Mr. Justice Fitzgerald, where the evidence appeared to be conclusive, and yet the jury on one occasion returned a verdict of acquittal, and that verdict called forth very strong animadversion on the part of the judge.

845. Those, I presume, were the observations of Mr. Justice Fitzgerald's that appeared in the public prints?
Yes, and that was not the only unsatisfactory verdict at the assizes; there were others which were equally so.

846. Was there not a case at the recent Tralee Assizes where, during the progress of the case, considerable manifestation of public feeling, in which the jury joined, took place in court?
Not exactly the jury, but the men who were standing behind the jury box, and who had been summoned to serve as jurors; they were not men who were actually empanelled at the time, but they were in that portion of the court-house allotted to jurors, into which other people who are not jurors also have access.

847. Was the jury in the box at that moment?
The jury were after finding their verdict.

848. What you have said is, I understand, limited to cases of a more or less agrarian character?
Entirely so.

849. Should you say, as far as other cases are concerned, that the juries are disposed to do their duty in a proper manner?
When I was Sessional Crown Solicitor for Kerry, criminal cases at quarter sessions were tried at three different towns of the county: Tralee, Killarney, and Listowel. At two of the quarter sessions the juries fairly enough on the whole discharged their duties. The crimes, if I may call them crimes, were not of a very serious nature; they were chiefly such as assaults arising from intemperance, and petty larcenies arising chiefly through poverty; but in one of the towns I found that the juries declined to find verdicts in cases of assault, although very bad cases of assault were brought before them. Doctors, who attended the men who were assaulted, were in attendance, and proved the extent of the injuries, some of which indeed were formidable; but in those cases from time to time the juries persistently acquitted the prisoners.

850. Would those assault cases be generally cases arising out of political quarrels, or religious quarrels?
No, because their politics are generally all of the same description. They were more frequently cases arising out of intemperance, on returning from fairs and markets, and committed without any reasonable cause, that anybody could understand, beyond the fact that they were drunk and fought.

851. What time are you speaking of now?
I am speaking now of a period ranging between 1875 and 1878, when I ceased to be Crown Solicitor.

852. But in such cases I understand you to say that the sympathy of the jury would almost invariably be on the side of the person who committed the assault?
Entirely so; and on one occasion it was proved; at least, it was brought under my notice, and established to my satisfaction, that a jury had been canvassed on behalf of an accused party, and steps were taken and an affidavit made, and the facts submitted to the court, and the trial was changed from the quarter sessions to the assizes, on the ground that there could not be a fair trial had in the locality, on account of the jury having been canvassed.

853. With regard to the trial of civil cases, would your observations apply equally?
At present they would, while the present state of things existed. I do not think a fair trial could be obtained as between landlord and tenant.

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854. But then we again come back to the fact that that would be in cases of a more or less agrarian complexion, do we not?

Yes, in one sense; it would be for the recovery of land, or the recovery of rent. But the other cases I was speaking of a little while ago were criminal cases connected with land.

855. But, whether the case is a civil or criminal case, if matters relating to the occupation of land enter into it, I gather from you that the jury is not very likely to do its duty properly; is that so?

That is my opinion.

856. Have you attended at all to the effect of the exercise of the right which the law now allows to the prisoner, of challenging a certain number of names on the list?

I have.

857. How does the exercise of that right operate?

The solicitor for the prisoner, if he rightly discharges his duty, first examines the panel, and he will exclude from it, or tick off at least, the names of all those persons whom he thinks could have any cause of ill-will towards the prisoner. He next will look through the list to ascertain who of the first 20 men would be most likely to find a verdict against his client: and he will put those by, as men who ought to be challenged peremptorily, and the jury taken from the residue. Now on the panel for my county at the last assizes, there were 80 names, and curiously enough, I find that upon the whole of that panel (assuming that they all attended) there are 20 names of men from whom I would say that I would expect a fair verdict; and three of those 20 were not in attendance, which reduced the panel, so far as my humble judgment goes, to 17 names upon whom reliance might be placed for finding a true verdict in agrarian cases.

858. You would not be in favour of depriving the defendant of the right of challenge altogether, I suppose?

I have for a long time considered that there could be no sound reason for allowing the peremptory right of challenge to the extent to which it now exists; because it is out of the question that any man would find upon a limited panel 20 names of persons who were positively prepared to perjure themselves in order to insure his conviction. And I think that the unlimited right which exists of challenging for cause no longer exists, whatever may have been the case in ancient times. There can be no sound reason for excluding 20 of the best men from the jury panel.

859. Then does your objection lie to the number of challenges allowed, or to the fact of any challenge at all without cause?

When one finds that such a right has been a long time in existence, one would be very slow to say that it should be altogether abolished. One must necessarily make some concession to public opinion; though my own private judgment would be that the reason for peremptory challenge no longer exists, yet I would say that, considering all the conditions of Ireland and the unwillingness to adopt new changes by the people where the administration of the law is concerned, a compromise, such as allowing the challenge of 10, ought to be ample; and I still would think it very hard to say that a man would find 10 persons upon the jury panel ready to convict him against the evidence, towards whom he could attribute no solid reason for believing they would do him an injury. I think that 10 should be the utmost he should be allowed under any circumstances as a peremptory challenge.

860. The tendency of the present arrangement is to keep the minority of respectable and more independent jurors out of the box, you think?

Entirely so.

861. Are there any other causes which operate in the same direction?

The right of peremptory challenge in cases of misdemeanour, being an innovation, and not surrounded with that halo of antiquity existing in the other case, I would certainly recommend that that right which did not exist prior to 1876, should be discontinued in cases of misdemeanour, and that the prisoner should be allowed his full right of challenge for cause, and for cause only.

862. It

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862. It has been stated to us that there would very often be cases where a prisoner might have a perfectly reasonable ground for suspecting that a particular juror might owe him a grudge, and yet where it would be extremely difficult to bring evidence as to facts sufficient to satisfy the judge that the juror should be made to stand aside; how would you meet such a case as that?

If such a thing occurred in Ireland, and if the prisoner felt he could not bring positive evidence to bear, his counsel or his solicitor would at once stand up and say, "Such a person, the prisoner thinks, ought not to be upon this jury; we cannot fairly challenge him, but he ought not to be upon the jury," and such a man would retire.

863. Would the judge thereupon order him to stand aside?

The juror would retire himself, and the Crown would not press him to do otherwise; that is my experience.

864. I would like to ask again a question I think I put just now. Are there any other causes which keep the minority of the better class of jurors from taking their fair share of service?

There is a natural disinclination on the part of jurors to attend if they can possibly avoid it. I do not say on the part of the whole class, but of some; men will perhaps be advanced in life; men will have their private matters to attend to, and would not like, in a large county like Kerry, to come a great distance in order to attend assizes, and would be glad to run the chance of escaping whether they were fined or not. And in practice it does happen that some of the very best men do not attend. Of course they do not absent themselves in very great numbers; because I have already told you that on the last occasion there were three, and three only absent.

865. In such cases of abstention, is a fine often imposed?

The law imposes the fine if the juror is not in attendance. The statute directs that they shall be fined, and they are fined if they do not answer to their names when called; but if there has been a fair attendance during the assizes on the whole, and the public time has not been wasted by their absence, the judge will very likely say to the clerk of the Crown, at the end of the business, "You may take the fines off the jurors." That has happened, but it does not always happen.

866. That is to say, if A, B, and C shirk their share of duty, and stay away, and D, E, and F are in their places, and justice does not suffer, A, B, and C escape without punishment?

Sometimes it does so happen.

867. Judging from your experience of the class of men you find on a petty jury, do you think that the presence of two or three men of better education and intelligence would be likely to obtain a more satisfactory result?

At ordinary times, and on ordinary trials, it would do so, no doubt; intelligence and education will have its influence in convincing the reason where prejudice does not completely control a man. But in those cases which we have been talking of, arising within the last few years out of agrarian disturbances, I should think that if you had nine educated men you would not get a verdict.

868. It has been sometimes suggested that the verdict of a majority of the jury should be accepted in cases of disagreement; how would that operate, in your opinion?

Fatally at present, because the vast proportion of the jurors being of the objectionable class to which I have alluded, they would consequently be in the majority, and their verdict would take effect.

869. There has been a good deal of Land League organisation, I believe, in the district with which you are connected?

It is very wide spread, and very much systematised.

870. Would it be a matter of notoriety that most of the farmers from any particular part of the country would be enrolled members of the Land League?

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They may not be actually enrolled members, but they are sympathisers, because all their interests are bound up in it.

871. Have you known any case in which jurymen have been actually threatened or intimidated?
No, I have not; and the necessity for doing so does not exist when the verdicts are one way.

872. *Lord Privy Seal.*] Did you mean to say that those 20 jurors, of whom you spoke just now, were special jurors?
No, they were on the common jurors' panel.

873. They were common jurors, picked out by yourself, as men who could be depended upon to do their duty?
I have picked them out for the purpose of my examination here only; but I have had nothing to do with placing them upon the panel. They are taken by the sheriff in rotation from the jurors' book, and these 80 names are returned.

874. As to the assault cases that you told us of just now, does it sometimes happen that they arise out of what may be called a scuffle or fight, and that the jurors do not think that there is very much to choose between the two parties?
It is very difficult to say what operates upon their minds in cases of that description; but the particular cases to which I have been alluding were cases where, in my opinion, no solid reason existed for verdicts of acquittal. It is quite plain at the same time that they do not look upon assault cases as such serious matters as people of a different class do.

875. What was the exact nature of those cases at the late Tralee Assizes, of which you spoke just now?
I would sooner, as an official, not enter into any individual cases; because when a man has been discharged after a trial in due process of law, I do not think it would be right for me to indicate any particular case.

876. I do not want you to mention names; but what was the nature of the crimes of which the persons were accused?
The cases generally were cases of the forcible retaking possession of lands.

877. Are you able to say that there has been a distinct change in the conduct of juries since the present agitation in the country sprang up?
I do say so.

878. As compared with their conduct, we will say, two years ago?
I intended to have said a little while ago; that in the commencement, as might naturally have been expected, jurors were at first unequal to the new duties; but there was from time to time evidently an improvement growing up in the system, and I think that perhaps ultimately it would have worked well but for the unhappy state of things that has come about.

879. Then I understand that until the present agitation sprung up, there was a short period during which the juries were apparently improving; is that so, in your opinion?
It is.

880. But that improvement was stopped and reversed by the effects of the present agitation, you mean?
Yes; but that answer is to be confined to those cases solely which arise out of the agrarian disturbances. In other cases the juries discharge their duty; and perhaps it would be right and fair that I should tell your Lordships of a peculiar, and a very peculiar case, which was tried at the last assizes, where a constable of police was indicted on a charge of having received money under false pretences, and having committed forgery for the purpose of obtaining the money. He was a constable who took an active part, or was supposed to have done so, against persons who had been mixed up in the Land League agitation. The charge that was brought against him was that he, having received money for a Crown witness, or rather having received a cheque that was payable to a Crown witness, got the Crown witness to endorse that cheque, and represented

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to him that it was for a less amount than it actually was, and paid him a smaller sum than was represented by the cheque. He was indicted for it, and a common jury was empanelled. He was tried in Tralee at the last assizes; numbers of witnesses were examined, and he was acquitted by the very same class of jurors as those who went wrong in the other cases where agrarian matters arose.

881. What inference do you draw from that acquittal?
I draw this inference from it, that in some cases where you would even sometimes be disposed to think that their prejudice would lead them to go wrong, they have gone right when the issue did not relate to land. While I have come here to give evidence, I feel it my duty to put both sides of the question before your Lordships, and to tell you what has come under my actual observation at that same assizes.

882. Do you mean that there was sufficient evidence for a conviction?
If they had found a conviction nobody could have said that it was a corrupt verdict.

883. You mean, at all events, that they were not influenced by their prejudices against this particular man?
They were not influenced by their prejudices against that particular man, and they acquitted him.

884. *Lord President.*] Your experience goes back to times before the passing of Lord O'Hagan's Act in 1871, I suppose?
It does. I have been a solicitor since 1848.

885. Do your remarks about juries apply equally to those times?
I think the old system worked well; it did so at least in the county of Kerry.

886. Even in times of excitement?
Even in times of excitement; with this exception, that at the time of the Phœnix conspiracy, I think it was (it is a great many years ago now), there were jurors who held out for the prisoner who had been indicted for some treasonable offence. In that case there was what the Crown would have called a failure of justice in obtaining a conviction. I remember the jury were locked up all night in that case. There were at times unsatisfactory verdicts under the old system; perhaps the other side may have called it unsatisfactory in their way, and the friends of the prisoner may have said that it was unsatisfactory because there was not an acquittal. The Crown might have said it was unsatisfactory because there was not a conviction. But my experience of the old system was, that it worked well.

887. Even in cases connected with the occupation of land?
Yes, certainly in Kerry.

888. There has not been a great deal of excitement in former days in Kerry about land; it has been a quiet county in former days, has it not?
It has been a remarkably quiet county, a most peaceably county until the last few years.

889. It was only political disturbances that agitated the county in those days?
Certainly.

890. At the time of the Phœnix trial there was a great deal of that kind of disturbance in Kerry?
There was.

891. At that time were jurors influenced?
There were convictions and there were acquittals, and there was a great deal of excitement of course, which extended to the jurors who took opposite views, as they always must do at times of great political excitement; but I do not know that the system is answerable for that.

892. There was not so much organisation to intimidate jurors and witnesses at that time as there is now perhaps?
No; there was no organisation that I ever heard of there to intimidate jurors; nor do I see that there exists a necessity for an organisation to intimidate them at present.

 893. But

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893. But there was not perhaps as much sympathy with the agitators then as there appears to be now?
Generally speaking, there was not.

894. But, as you said before, there is very considerable sympathy at the present time?
There is very considerable sympathy.

895. I dare say you would not like to go into particular cases; but, speaking generally, what was the reason why you considered that only 20 men were fair men on that particular panel. Can you give any reasons why the others were not proper men to be on the jury generally?
They are tenant farmers whose interests, or supposed interests, are very much bound up with the present agitation.

896. It was not from any want of intelligence, then?
No, not from want of intelligence, by any means.

897. But from sympathy with the present movement which is agitating the country?
Entirely so.

898. You spoke about the challenges, and you said you thought that, as at present, so in future, if the counsel said that a particular juror would not be a fair one to try the prisoner, he would stand by; but supposing the panel were nearly exhausted, he might not be allowed to stand by?
I should say that a juror would, under such circumstances, object to himself, and say he would not wish to serve.

899. I suppose the judge could compel him to serve if they were short of jurors?
I think a judge would prefer to adjourn the trial sooner than say that it was to go on with a man whom the prisoner did not like to try it, or who said or implied that he would not go into the box with a free mind.

900. I suppose it would be rather hazardous to rely upon that?
There would be a certain amount of hazard.

901. Do you think that in all cases a prisoner could properly defend himself so far as to keep off the jury a man who might be unfair to him when he had to show cause?
I think he ought to be able to do so.

902. You think he is able to show cause in every case?
I think it would be very difficult to imagine such a case existing as that a man would go into the box determined to convict another contrary to the evidence, and at the same time that there should be no apparent cause for his so doing. I think there must be some grounds always of which some proof can be capable of being given; and the proof in such a case would be very very slight indeed that would be required to support a challenge for cause.

903. *Lord Privy Seal.*] You mean to the satisfaction of the judge, I suppose?
To the satisfaction of the judge. The tendency of the mind of every judge would be to listen to reasonable cause.

904. *Lord President.*] Does the same difficulty exist with witnesses as exists with the jurors, in coming forward now at a trial?
The witnesses who come into court are usually bound by informations or depositions which have been taken before the magistrates, and those are the only witnesses of whom the officials have any notice. They come into court, and are obliged to come into court, because they have made their depositions. Those depositions are in writing, and they are examined from them. The evidence usually corresponds with that taken down before the magistrate.

905. In fact the effect of sympathy or fear would be brought to bear upon them, both before they made their depositions, and afterwards when they came to the court, I imagine?
Of course there would be cases of that kind.

906. You

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906. You do not think that there is practically any difficulty in getting witnesses to come forward and give evidence now?
I did not intend to convey that. I think there would be cases in which there would be the greatest difficulty.

907. Are many trials obliged to be postponed on account of the difficulty of getting evidence?
Many cases where a *primâ facie* case is established might not be held to be conclusive by a jury without additional evidence: those cases frequently arise, and possibly additional evidence might be supplied if the witnesses would come forward.

908. And is it the feeling of the country which prevents your getting this evidence now?
Yes, the sympathy of the people would be with the prisoners, and there would be a general indisposition to give evidence unless under compulsion.

909. Whether you had a jury or not there would be that difficulty existing, would there not?
That difficulty would still continue.

910. Lord *Inchiquin.*] I think you said that in your opinion the jury system has perfectly broken down through no want of intelligence on the part of the jurymen, but on account of general intimidation and the state of the country?
I did not mean to convey that the juries were generally an intelligent class by any means, but I am bound to say that there is a great amount of intelligence amongst them.

911. There is a sufficient amount of intelligence among the jury to find a verdict, if they choose to?
Precisely.

912. I think you also said that even if there were nine of them who were intelligent men, "intelligent" was the word you used, was it not?
Yes.

913. Did you mean by that special or common jurors?
I meant if there were nine men who were determined to find a verdict according to the evidence. And the question, I think, put to me was whether, if they were men of intelligence, they would be able to control a verdict, and I said I did not think that they would, because, as you should have unanimity, if three men held out, or four men held out, you would have no verdict.

914. It has been suggested to us by one of the witnesses who has been here, that there should be a certain number of special jurors on the jury list; I think he suggested six, but I gather that you do not think that that alteration would be sufficient to produce a satisfactory verdict at the present time?
I do not think it would.

915. That being the case, I have not heard you make any suggestion as to what you think ought to be done under the circumstances; have you any that you would make?
If it is necessary to make a change; and the reason why I say "if it is necessary" is because no man can say what the result of the present Land Bill may be. If it gives peace and quietness to the country, the existing system, which was beginning to work well, may be restored to its former condition; but if, on the other hand, it will not have that effect, then, until such time as order is re-established, and until the present state of agitation ceases, I think that some substitute should be found for trial by jury in agrarian offences.

916. Have you any suggestion to make as to what that substitute should be?
I think that when a component part of the existing tribunal refuses to discharge its duty, the only remedy is to dispense with it, and let the remaining portion stand. That is, in other words, trial by one or more of Her Majesty's judges.

917. Viscount *Hutchinson.*] Temporarily, I suppose you mean?
Temporarily, I say all through, until such time as order is restored.

 918. Lord

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918. Lord *Inchiquin.*] You think, if I understand you rightly, if that were done temporarily, there would be sufficient evidence forthcoming to enable the judge to form an opinion, and which the jury declined now to form?
I am sure there would.

919. You said something just now about the difficulty of getting evidence?
I said that cases do arise, and have arisen, and always will arise where, though a *primâ facie* case is made out, it is capable of being rebutted by testimony on behalf of the prisoner; which testimony again upon its part might be set aside by the production of certain evidence on behalf of the Crown, which, under existing circumstances, would not be forthcoming. In other words, I say that at present you cannot get that full testimony that is in all cases required. You can have in in many cases, and it is not acted upon, but you have not the means of getting it in all cases. I do not mean to say that in all cases submitted to the jury that full and ample and conclusive evidence of guilt has been produced; but in many cases it has been produced, and it has not been acted upon.

920. Viscount *Hutchinson.*] With regard to this question, I suppose there are a great many cases that have come under your notice, of crime supposed to have been committed in the country, where no evidence has been procured even upon the depositions to justify the magistrates in sending the case for trial?
I think not; I think there has been always a sufficient case made out. The magistrates would not return cases for trial without a *primâ facie* case being made out; they remand from time to time until sufficient evidence is obtained to determine it.

921. But cases do occur, do they not, occasionally, where sufficient evidence is not procured; you have known a prosecution to be given up, have you not?
I have known cases of course where grand juries acting upon the same testimony have ignored the bill.

922. I am talking of a previous stage; you have known cases where prisoners arrested upon a certain charge have been discharged by the magistrates before the cases have ever gone to trial; that is of pretty frequent occurrence now, is it not?
Yes.

923. Do you think that in the majority of cases sufficient evidence is procured to justify the magistrates in sending cases for trial?
I believe that in numbers of cases no evidence is got, and nobody is sent for trial.

924. Taking the other phase of the question, the difficulty of obtaining a conviction from the jury is rather the more serious of the two, is it not?
It is the more serious of the two; because it is, upon the whole, even better that a man should not be put upon his trial at all, rather than that he be put upon his trial, and, if guilty, escape.

925. The only alternative I understand you to propose is a partial or temporary abolition of trial by jury; has it never been suggested to you that something in the way of enlarging the facilities for changing the venue would be of some use in these cases, more particularly in agrarian cases?
I have heard it suggested that parties accused of agrarian offences should be tried in England.

926. Have you any opinion to express about that?
My opinion is not worth very much, but I do not suppose it is a thing that would be done; if it could be done it would have a most desirable effect.

927. The question of expense is one of the smaller arguments that has been raised against the adoption of that course; but that would not be very serious, would it?
I do not think the question of expense should enter into the consideration at all in a matter that affects the peace of the country.

928. Is

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928. Is there any legal or technical objection against it that you know of?
I should say there is, but none that the Legislature could not over-ride.

929. Putting the question of trial in England aside, do you think that the power of changing the venue to Dublin, and having these cases tried by special juries, would meet the case?
I do not think it would, and I do not think it would be right or fair to put upon the Dublin jurors so invidious a duty. No matter how upright and honourable men might be I should not wish to put upon them the duty of trying all the crimes that arise in the different parts of the country.

930. With regard to that particular class of crime, that is agrarian crime, I fancy you hold the opinion that unless a very decided change in things occurs after certain legislation that is expected to come about, it will continue; is that so?
Unless the change comes about, of course it will continue.

931. Do you believe that it will ever entirely disappear?
It is a political question more than anything else. I have political opinions of my own, but I do not know that it would be right for me to obtrude them upon the Committee. I will answer the question if your Lordships desire it.

932. You do not wish to say whether you consider or not that there is a certain class of crime existing in Ireland which will have to be always met by exceptional measures, if met at all?
I would not say that. I adhere to my former answer, of course, that if this change in the law is made, and is accepted by the people, and they will be content with this measure, then I say that I do not think you will have that exceptional state of crime existing, or any approach to it, which would require special measures for the administration of justice. But it is all a matter of conjecture as to whether it will come about or not.

933. But, as I understand, you object to putting the onus of trying such crimes upon Dublin jurors, because you think they would incur odium if you did so; but would it not be the case that, if this sort of crime diminished, they would only be performing a temporary duty?
I do not expect any gradual diminution of crime. I think you will have either a total cessation of it, and a return to the former state of things, or else you will have the state of things that now exists continued until such time as men's minds will change.

934. Then you look upon your first proposition as the only way of meeting the difficulty; that is the temporary abolition of trial by jury?
I do.

935. Lord *Silchester.*] Are the jury lists correctly formed, and the jurors correctly summoned, in your experience; I know that they ought to be, but are they?
The jury lists, I know, are correctly formed. The duty is discharged in my office of framing the jurors' book in the dictionary manner, as prescribed by the Statute, and as returned to me by the several clerks of the unions. I have to take out names from the different lists, and put them into dictionary shape, and these lists are subsequently, at the October revising sessions, annually submitted to the county court judge, and all parties are invited to attend by public advertisement. Evidence is taken, where evidence is offered, as to qualifications, disqualifications, and exemptions, and the lists are accurately made out. But as to the summoning, that duty rests entirely with the sub-sheriff, who, in the county of Kerry, has filled the office, I believe, for the last 25 years in succession, and upwards. He is a most honourable gentleman, and would be sure to discharge his duty fairly.

936. Have complaints been made as to jurors being wrongly summoned?
Men will sometimes say that they have been summoned oftener than they ought.

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937. Lord *Tyrone.*] You mentioned just now that 20 jurors, out of a panel of 80, would be the only ones that you could rely upon?
I am speaking of the panel of the last assizes only, and only as relating to agrarian cases.

938 But that is the proportion that you take out of that panel?
Yes.

939 What proportion of those 20 would be likely to get upon any one jury; could you draw any line of that sort?
I could.

940. What proportion would you say?
None in cases of felony.

941. Then you consider that the jury would be likely to be chosen out of the 60 who could not be depended upon?
Precisely, subject to the peremptory right of challenge on the part of the Crown.

942. And, therefore, that right would be of no use, as the Crown would not know who to depend upon?
Practically speaking, it would be of no use.

943. May I understand from that, that you do not consider that a jury for an agrarian case could be got at all that could be depended upon?
I do not.

944. Do you consider that the difficulty of getting evidence is increased, I may say materially increased, by the great chance that no verdict will be given?
I do not think that is taken into consideration either one way or the other. There is a general disinclination to give evidence, irrespective of what the result may be.

945. You do not consider that a witness would be more disinclined to give evidence if he thought that, after committing himself by giving evidence, his doing so would have no effect, because the man would get off?
I do not think that that enters into the calculation. The witnesses who are brought forward are generally brought forward under compulsion by the constabulary, and their depositions taken. Then there are a great many more whose evidence might be forthcoming sometimes, but whose attendance the police are not able to procure, and about whose evidence they know nothing. I do not think that that operates.

946. Earl of *Derby.*] If I rightly understand your evidence, I gather that it is your opinion that nothing will remedy the present failure of justice, in agrarian cases, so long as juries continue to be taken from the same classes as at present?
Precisely.

947. And that a mere partial addition of jurors of a higher class would not be of any use?
No.

948. Then, in fact, the mischief arises, does it not, from the fact that the sympathy of the people generally is not with the law, but against it?
As to their sympathy being with the law or against it, one must know Ireland very well to enable one to say what the motives are which operate with them. Now, strange to say, after the evidence I have given, I would be unwilling to say that, in the ordinary sense of the word, the verdicts, though unsatisfactory, are corrupt. I say "strange to say," and I will tell your Lordships why. To do a corrupt thing a man must wilfully do what he believes to be wrong. These men are led to believe, by persons upon whose judgment they rely, and in whose opinions they have perfect confidence, that the existing land laws are not only unjust, but that they are iniquitous. They are also told that there are certain inalienable rights which no human laws have a right to tamper with or to infringe; and they enter the jury-box fully recognising the fact that they have either

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either to disregard the evidence and their oaths, or to do what they believe to be an act of injustice in finding a conviction against persons for doing an act which the law calls an offence, but which they believe to be justifiable, or, perhaps, meritorious.

949. That comes very nearly to what I said, that in such cases the sympathy of the people is against the law and not with it; is not that so?

Well, "against the law," as working an injustice towards them; but not against the law, because it is law, not because it has been the emanation of the Parliament of the United Kingdom, as distinct from a local Legislature. It is not that there is any disinclination to convict for other offences against the law, but that there is a disinclination to convict in cases which they believe would terminate in injustice towards the person who would be convicted. And I believe that those men when retiring from the jury box, knowing no public opinion but the public opinion of the masses, or at least recognising no other opinion, leave the jury box without having the slightest disturbance of conscience as to the result of their verdict, they receive from those persons who are listeners a certain amount of applause; and very often their verdicts are hailed by the people with bonfires, as a triumph of their principles.

950. May you not put it in this way, that they think they are doing justice, and correcting the injustice of the law, by refusing to administer the law as it stands?

Precisely; they do think so.

951. Have you ever heard of a jury being canvassed by friends of the prisoner?

I stated so in an early stage of my evidence, and I mentioned one case which came under my notice, in which an affidavit was prepared, the facts submitted to the Court, and the trial was transferred from the quarter sessions to the assizes. That was anterior to this agitation; it was prior to the year 1878, or, perhaps, it may have been in 1878, when I was Crown Solicitor.

952. Then do you not think that something would be gained by trying a prisoner in a place where he was personally unknown, and where, therefore, his friends could not get at the jury?

Might I take the liberty of asking your Lordship whether you mean in England or in Ireland?

953. I am speaking of Ireland?

To try him in a different part of Ireland your Lordship means.

954. Yes, in another part of Ireland, say in Dublin?

Dublin jurors are at the present moment discharging their duties well in civil cases.

955. Do you think that the strain upon the Dublin jurors would be too heavy?

I think the strain upon them would be too heavy.

956. You gave us your opinion as to a jury returning a verdict by a majority; I understood you to say that you did not believe in the efficacy of that as a remedy?

I do not.

957. You put it, I think, do you not, on this ground, that if the verdict of a majority is to be received, you would have acquittals in cases where at present there is a disagreement, and where, therefore, the prisoner can be put again upon his trial?

Yes.

958. Therefore, in your opinion, the failure of justice would be only more complete than it is at present?

That is all.

959. Duke of *Marlborough*.] Is there any previous occasion, within your recollection, of the state of things in Ireland, when a similar condition of things existed, as regards the general tendency on the part of jurors to return verdicts of acquittal, irrespective of the evidence?

No.

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960. Your recollection does not go so far back as the year 1833, perhaps?
No; I was admitted a solicitor in the year 1848, when I was about 23 years of age, and I was practising as a solicitor up to the year 1880. I was some 32 years practising in Kerry.

961. You are aware that since the passing of Lord O'Hagan's Act of 1870, Acts have been passed both raising the qualification of jurors; independently of the existing state of things is it your opinion that since the passing of those Acts the raising of the qualification has had a beneficial effect?
I do not think that the qualification was universally raised. I think you will find that it was and it was not. If you look to the Schedule of the Act of 1873; take, for instance, the county of Kerry, you will find there that of the special jurors the qualification is the same in 1873 and in 1876; and you will find that in the cases of the common jury, though it was raised from 30 *l.* to 40 *l.* in the case of persons occupying lands, it was reduced from 20 *l.* to 10 *l.* in the case of persons occupying houses.

962. Take the Act of 1876, then; what do you say as to that?
That is what I am speaking of. If you will look at the Schedule I think you will find that the qualification of jurors in towns was reduced from 20 *l.* to 10 *l.*, but in so far as it was raised in country parts it was a great improvement.

963. Then, if that is the state of the case, has any change that you have been able to remark occurred since the passing of that Act?
The higher you go in the qualification the better the class of juror will naturally be. But I would suggest that the qualification in case of towns should be restored to what it was by the Act of 1873.

964. Supposing that the present state of things were, under any circumstances existing in the future, to pass away, and a more normal state of things to take its place, is that the only suggestion you would have to make with a view of remedying or improving the present state of the law as regards juries?
It is not the only suggestion I would make. If the present state of things terminated, and we had to go back again to a better state of things, I would say that there is no reason that I can see why we should have upon the jury book for the county of Kerry so large a number as 1,067; bearing in mind that only 80 have been summoned on the panel for the assizes I refer to, and which are held twice in the year. Twice 80 would be 160. The quarter sessions in two towns for the trial of prisoners are held four times in the year; that would be equivalent to eight sets of juries wanted. I should say that half the number of jurors upon the general jurors' book would be amply sufficient to discharge the duties for the county without unduly pressing upon them, and consequently it would admit of the qualification being very considerably raised. If you reduce the number from 1,067 to 500, then 400 would, in my opinion, be ample and more than ample for the discharge of the duties; you would be enabled to raise the qualification very much indeed.

965. Then, in fact, that is the suggestion that you would make, namely, the raising of the qualification, I understand?
Yes.

966. With a view of diminishing the numbers that is to say?
Not only diminishing the numbers, but of having a better quality of juror.

967. I think you stated in one of your answers that, during the present state of affairs in Ireland, there is a considerable amount not only of sympathy but of intimidation?
I do not think I did say that; at least I did not intend to say it; I rather think I said that there was not very much occasion to intimidate jurors. There was a certain amount of intimidation in the commencement of the organisation, until such time as they fell into it, for certain purposes; but now I do not see that there is that practical necessity for intimidation existing, with regard to the jury question, which is the only one we have to consider.

968. I understand

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968. I understand you to admit that in the commencement of this system there was intimidation existing as against the jurors, but that that intimidation was transformed into an effort to induce those persons to join an association, and after they had once joined it intimidation was no longer necessary?

No, that is not what I intended to convey. I daresay I expressed myself imperfectly, but I never intended to imply that the intimidation was directed to jurors as jurors. I think that the sympathy has always existed in the jury box since the organisation of this agitation. What I meant by intimidation was intimidation that prevailed throughout the country at large, such as that where a man who would have very great sympathy with the cause, as they call it, of the people, would withal be desirous of saving his pocket in the matter of law costs, and also desirous of paying his rent. The intimidation would be applied to such a man as that who, largely as he might sympathise with the cause, would like to pay his rent and keep the costs in his pocket.

969. Do you conceive that within a short period, say the last winter assizes, or the winter before that, it may not be possible that jurors have been prevented from attending at the assizes, although summoned on the panel, for fear of being put into the jury box and having to give a verdict, or having to disagree and so prevent a verdict, rather than to take a course that might be unpopular?

I know the county very well; I know the people and the class of jurors very well, and I have a particular recollection of this panel, and I know that that kind of thing did not occur.

970. That is in that particular case to which you allude?

Yes.

971. *Chairman.*] With regard to the suggested alteration of the qualification of jurors, I am not quite sure whether I understood your suggestion; was it to the effect that the rating qualification for house property was too low?

I intended to have stated that, when that Act of 1833 was passed, there was no tenement valuation for Ireland, and there was no means of ascertaining whether a man was rightly put upon the book or wrongly put upon the book, because it would be a mere chance whether his house was worth 18*l.*, 20*l.*, or 22*l.* a year.

972. The rating qualification of 40*l.* in the county of Kerry is a high qualification, is it not?

It is.

973. Could you afford to raise that without running considerable risk of getting rid of the greater part of your jurors?

I think you could raise it to some extent, even if the greater number of the jurors was got rid of. I think you could get rid of half of them and still have an ample supply.

974. You do not think that by raising the 40*l.*, say to 50*l.* or 60*l.*, the result would be that you would get rid of quite half the list, or three-quarters, or four-fifths of it?

I do not think it would. I daresay you might raise the qualification with safety another 10*l.*; and I think every 10*l.* that you do raise it would be 10*l.* gained.

975. I have seen it put in this way, that in some of the agricultural districts in Ireland the list would not stand the raising of the qualification; do you agree with that?

That might be so, but that would only apply to the court of quarter sessions, and it would be very easy, from the limited extent of the districts allotted to the quarter sessions court, to bring the jurors from the neighbouring district; and there is, I think, power to that effect given by one of the Statutes.

976. Duke of *Marlborough.*] What is your idea of the present system under which the names are put in alphabetical order; do you consider that that is as convenient a mode as can be adopted?

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I think it is the best mode, because it removes one of the strong objections to the old system, which gave entire discretion to the sheriff to select any names he pleased from the jurors' book. The existing system puts it out of his power to do so; and I am free to say that I think in theory the existing system could not be improved upon.

977. What is the practice with regard to summoning the panels; how often is the same man summoned?

Where you have 1,067 names on the book, as we have in Kerry, with 231 of them put upon the special jurors' list, that would leave somewhere about 800 and odd open. Each man's turn ought not to come round more than, perhaps, once in two years for the assizes, and once a year for his quarter sessions district; the area is limited, and that, I think, would be about the average.

978. The panel to which you are alluding to there was composed of 80 names, was it not?

Eighty.

979 Is that the number that was taken; or what regulates the number of which the panel is composed?

There is nothing to regulate it; it is left to the sheriff to summon any number he pleases. He knows very well, before he issues the summonses, the number of cases there are to be for trial, and he makes his arrangements accordingly. He has to consider the circumstances of the people, and of the times, and of the country, so as not to bring too many a great distance away from their homes and at a great expense; and he takes care not to summon more than he thinks absolutely necessary. But sometimes he goes a little too close to the mark; for instance, 80 evidently were too few to have on the panel for such a county as Kerry.

980. With only 20 reliable names upon it, I think I understood you to say?

If they had attended there would have been 20.

981. *Lord President.*] We had the other day, from, I think, a clerk of the peace, a return given us of the number of cases tried, specifying what number of prisoners pleaded guilty, and what juries disagreed, and what number were acquitted, have you any such return for Kerry?

All the sessional Crown solicitors have such returns; they make them after each sessions, and they are sent to the Attorney General; but I have no such return. They are made out by the sessional Crown solicitors themselves; they state the offence, whether a bill or no bill was returned, the verdict, and the sentence. Mr. Bence Jones yesterday said that he knew occasions where the executive had been applied to by clergymen, for the purpose of allowing persons who were indicted to plead guilty, and to be allowed to stand out upon their own recognizances. I may say that, so far as the county of Kerry is concerned, such a circumstance, I believe, never occurred; I have never known an instance of any individual (ecclesiastical or lay) who applied to the Government, or to me in my humble capacity, as representing the Attorney General at sessions, to interfere in any way with the administration of justice. Perfect and full discretion is allowed to the sessional Crown solicitors in all their cases, and the sessional Crown solicitor can proceed with a case, or enter a *nolle prosequi*, or allow a person to stand out on his own recognizances, as he thinks best, having regard to the nature of the case. That discretion is always exercised under a deep sense of responsibility and duty, and cases frequently arise when it is a wise exercise of discretion to accept a plea of guilty, and allow the party accused to stand out on his own recognizances, when there has been no breach of the public peace. That has been done over and over again, and I daresay will be done to the end of time; and I think Mr. Bence Jones entirely misapprehended the action of the sessional Crown solicitors, and that he is under an erroneous impression in believing that they were actuated by any outside pressure brought to bear upon them, directly or indirectly. He also stated to your Lordships yesterday that Chief Justice Blackburn at one time, upon a special Commission, tried prisoners

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prisoners with jurors drawn from the grand jury panel. Some of your Lordships, I daresay, in your younger days, have served upon grand juries in Ireland, and are aware that the sheriff invites gentlemen of property to attend. But that the 23 gentlemen, or any of them, invited to serve upon the grand jury, and who find the bill against the prisoner, should afterwards be called into the common jury box to try that same prisoner over again, would be illegal in the highest degree; and I am quite sure that Mr. Bence Jones was only giving you, in a mistaken manner, what he had heard from someone else, when he made that statement. The idea of a grand jury, who had found bills, coming down into the common jury box afterwards to try the prisoners, is a very erroneous one, in my opinion.

982. *Lord Privy Seal.*] In connection with that subject, can you inform us whether, when a special commission was issued, there was any special mode of forming the jury?

I do not know whether there has been any special commission issued since the first of Lord O'Hagan's Jury Acts; I rather think not. Of course the same law then would have guided the formation of the panel as governed the existing state of things at the ordinary assizes.

983. Lord *Inchiquin.*] But this special commission, I think, was in 1848, was it not?

Yes, the special commission, to which Mr. Bence Jones referred, was in 1848, as I believe.

984. *Lord Privy Seal.*] I presume you would think that the issue of a special commission now, under the present law, would make no difference whatever as to jury laws?

No, it would make no difference; but of course, under the old system, they could have been summoned by the sheriff entirely at his own discretion, and he could have taken any names he pleased.

985. Lord *Ardilaun.*] Is it your opinion that the judges have not sufficiently inflicted fines upon jurors who have absented themselves from attending to their duties?

So far as my experience goes the attendance has been very fair in the county of Kerry; sometimes the fines are left on, and sometimes they are taken off. I have never known an instance where they were taken off (so far as my humble judgment is worth anything) in which I think they were not rightly taken off.

The Witness is directed to withdraw.

CAPTAIN OWEN RANDALL SLACKE, is called in; and Examined, as follows:

986. *Chairman.*] You are resident magistrate, I think, at Tipperary?

Yes, resident magistrate at Carrick-on-Suir, which is on the edge of three counties, Waterford, Tipperary, and Kilkenny; there is an equal part of my district in each; so that I have had the opportunity of judging of the effects of assizes and quarter sessions in the three counties.

987. And your official duties give you an opportunity of watching the progress of the case from the first committal of the prisoner up to the point of his trial by a jury, do they not?

They do.

988. Have you any observations to make upon the result of trial by jury in any recent cases under the present system?

I think the present system, as regards minor cases, or the ordinary cases, such as larcenies and ordinary misdemeanours, works fairly well now, as the juries understand their work; but I think that in agrarian and political cases, and in many like cases of serious assaults on the police, the system utterly fails. I am speaking of my own experience of miscarriages of justice.

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989. Would this be traceable to the difficulty of procuring evidence in such cases, or to the mis-conduct of the juries, even where evidence was forthcoming?
I think that in cases such as I have mentioned, no matter how strong the evidence is, the juries will often look for a loop-hole to acquit, and that they very often will acquit without any reason whatsoever in cases of that nature.

990. From what class are the jurors of whom you are speaking usually drawn?
Generally from the farmer class in the counties, or the small shopkeepers, except in the case of the winter assizes which have been established lately. For instance, in Waterford they have then been taken entirely from the city.

991. Does what you have said apply equally to the city juries?
As a rule the city jurors are better; the same influences are not quite so much at work.

992. Perhaps you would state what those influences are?
In the first place, I think that in serious cases there is very often intimidation; and I think, without intimidation being actually practised, the people are afraid to act as jurors, thinking that by so doing they will either make themselves unpopular, or get into trouble afterwards; and I think that in the jury-room (I have heard so) influences are very often brought to bear.

993. Do you really mean in the jury-room?
Yes, I have been credibly informed of that.

994. A juror, who did his duty fearlessly and independently in a case of that kind, would expect to be afterwards regarded with ill-will, you think?
I think, in the present state of things, he would run a great chance of being what is called, Boycotted.

995. Has that been the case only of late, or for a considerable period of time?
I think that in all times, since the present jury system has been in operation, there has been a great difficulty in getting a conviction in agrarian or political cases, more especially in agrarian cases.

996. And that difficulty has increased lately?
It would make it almost an impossibility, I consider, to obtain a conviction.

997. You personally would have no doubt that in cases of a particular description, however strong the evidence was, there would not be a reasonable prospect of obtaining a verdict?
I think not in many cases, particularly cases of great interest. Perhaps I might give an instance of a case that applied to the city of Waterford. The winter assizes were held there last December, and there was a celebrated case for trial, the murder of Mr. Boyd, which happened not in that county, but in the county of Kilkenny. I heard myself of intimidation having been used, which I believe was the fact; one juror spoke to me himself; I happened to meet him, and he asked me what he was to do; he said that he dare not go upon the jury, or words to that effect; that he dare not find a verdict, is what he meant. I heard of others, who were respectable merchants, keeping away when their names were called. The trial was in consequence postponed, and it came on again at the Kilkenny Assizes in the spring, when I was also present. The Crown Prosecutors, having consulted, came to the conclusion there that it would be impossible to get a fair verdict in Kilkenny; and, as a matter of fact, the case has been now moved to the Queen's Bench, and is next week to be tried, I believe, by a special jury, drawn under what is called, the old system.

998. Will you state how that comes to pass?
I will tell you the procedure as well as I know it; but it is a legal question more than anything else. Perhaps before I go to that, I may say that there is another similar case from Waterford, which went through the same ordeal as the Boyd case, and is being tried this very day in Dublin. It is a thing that does not come under my cognisance; but, as I understand, in selecting a special jury under the old system, the procedure is this: there are 48 names taken from the special jury

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jury list of the county, or city, or whatever it may be, by ballot; the long panel is taken, all the names are put down in the usual way on a bit of cardboard; the 48 names are drawn, and that number is reduced again to 24, and from those 24 the jurors are taken; and those are special jurors.

999. Those, I suppose, are jurors with the higher qualifications?
With the higher qualifications.

1000. Is there a very wide difference between the character and disposition of the persons with that higher qualification, and those who are the ordinary jurors with the rating qualification?
I think they are men of more independence, and would be better qualified to try a case of importance.

1001. Lord *Inchiquin.*] Has the Crown always got the alternative of going through this form of drawing of the jury on what you call the old system; can the Crown always do that if they please?
I believe they must make an application to the Queen's Bench; but that is a legal question beyond my knowledge; I only know, as a matter of fact, the result.

1002 *Lord President.*] I wish to ask you a question in order to get quite clearly the facts about the Boyd case; the Boyd case would naturally have been tried at Kilkenny, would it not?
No; because the Winter Assizes, which comprised the three counties, were held at Waterford; but I mentioned that it was in Waterford, not its own county, to show that it had the advantage of a change of venue.

1003. You say that it practically had a change of venue?
It practically had a change of venue.

1004. Then it went back to Kilkenny, I understand, where, under the old system, it would have been tried?
Yes.

1005. Then the venue was changed to Dublin?
The trial was postponed, and an application was subsequently made to the Queen's Bench to have it moved up there.

1006. Practically now, this is the second change of venue; this is the second time it has been tried out of the immediate district?
It is the second time that it has been brought forward for trial.

1007. Out of the district where the crime was committed, I mean?
This is the second time.

1008. *Chairman.*] You were in the room just now when the last witness answered a question of Lord Derby's. The answer which he gave us was to the effect that jurors habitually failed to do their duty, not so much on account of fear of consequences to themselves, but because they believe in a sort of unwritten law, which on their consciences is more binding than the law of the land, and to which they have more regard than to the law of the land; is that your impression?
I believe that to be perfectly correct. I may mention, while on the subject of instances of intimidation, that at that same Winter Assizes there was a case of forcible possession tried, where Judge Barry laid it down so clearly that you would have thought no jury could possibly have found anything but a conviction. The jury, however, acquitted the prisoner. Judge Barry said that he would like to know upon what grounds they had come to that conclusion, and one juror said he thought it possible that the wind might have blown in the window, and somebody got in that way, so that it might not have been a forcible entry; showing that they look for loop-holes by which to avoid a conviction; that was a very far-fetched excuse.

1009. Then, I may take it generally, that your conclusion is that with regard to a certain class of offences, and particularly at a time when public feeling is a

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good deal excited, there is little or no prospect of a petty jury finding a verdict in accordance with their oath?

That is my opinion.

1010. Duke of *Marlborough.*] I think you stated that at the Winter Assizes the jury is taken from the town?

Yes.

1011. Have you an association of the Land League established in that neighbourhood?

Everywhere.

1012. I suppose it would be very difficult to find a juror who was not a member of the Land League, would it not?

I think it possible that in a town like Waterford, there may be a great number of jurors who are not Land Leaguers; in fact, I am sure that there would be a good number taken from the class of merchants, and people of that description.

1013. Still is it your opinion that the influence of the association, called the Land League, would be felt among those jurors, though they might not be members of it?

I think it would be felt amongst most of them. I think it is only fair to say that one or two jurors expressed great indignation at Waterford, at the supposition that the Boyd murder could not be fairly tried there; but my opinion is that it could not have been. That feeling was expressed by individual jurors afterwards; because there are certain individual men who would not be influenced by anything of the sort.

1014. The opinion was given by a previous witness, that in his view intimidation was not exercised against jurors in regard to the verdicts which they might give; that, in fact, there was so much sympathy on the part of the jurors generally that intimidation was not necessary; what do you say to that?

I think that both causes operate; that there has been intimidation, and that the other influence is at work as well. To prove what I say about intimidation, I may say that at the very Winter Assizes we are talking of (it is not necessary to mention names), a prominent member of the Land League made a speech to a great number of people in Waterford, talking of the unfairness of bringing a certain case to be tried out of its own county, down there; and he said that he hoped that the jurors of Waterford would send the accused persons back with an unblemished character to show the opinion they had of the course taken. The matter was brought before Judge Barry, but the Commission had not been opened at the time, and there was a difficulty about making it a contempt of court.

1015. The full effect and meaning of that speech would be thoroughly well understood, I suppose?

Perfectly.

1016. Lord *Emly.*] Was there any case of conviction at the Winter Assizes in respect of any of these agrarian or Land League offences?

Yes.

1017. In that case were any of the jurors Boycotted, or did they suffer in any way from having found a verdict?

The case that I am thinking of at the present moment was a case from the far end of Tipperary, which was tried there, in which the jury found some of the prisoners guilty. It was a case of taking forcible possession. But there were other cases from the immediate neighbourhood in which it was perfectly clear, according to the evidence, that the prisoners were guilty, but yet they were acquitted.

1018. I wish to direct your attention to the point whether a juror would really suffer for doing his duty. The jurors think they would suffer for doing their duty; can you mention cases in which jurors have suffered?

I cannot say that I have personally known of any such cases.

1019. Lord

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1019. Lord *Tyrone.*] Can you make any suggestion as to a change for the better in future?

Yes; I think in all cases where there is a trial for political or agrarian offences there should be a power given to the Attorney General to enable him to direct that the case shall be tried by a commission of the two judges who happen to be on the circuit.

1020. You would make that apply to all cases, whether agrarian or political?

I would apply that to all agrarian and political offences; but any case which the Attorney General considered, as the first law officer of the Crown, was a case that could not be fairly tried by a jury, I would suggest that the Attorney General should have the option of having it tried by the two judges on the assizes. I would recommend that that be made a permanent law, so that if an agitation like the present arises at any time that could always be referred to without the necessity of any special application being made to Parliament or anywhere else.

1021. Do you think that any improvement could be made in the jury lists as they at present exist?

Yes, I would make considerable improvements in the jury lists.

1022. Will you state what improvements you would suggest?

I would endeavour, as far as possible, to combine the advantages of the old system of selection with the fairness of the present alphabetical system. To do that I would propose that the jurors should be divided into two classes, first and second. To begin with the classes that already exist, I would let the second class jurors try all cases at quarter sessions. As a matter of fact, although the quarter sessions court has the power of trying every offence except murder and treason, all the cases that have any political aspect at all are returned for trial at the assizes; for instance, cases even of riot are always returned to the assizes. I would also recommend that the first class jurors be composed of a higher standard. The rating qualification would, of course, differ greatly in different counties, as it does at the present moment. But I should think in large counties there should be a rateable qualification of 100*l.* a year, which would comprise very much the class from which the special jurors are taken at present, and I would let this class alone be summoned to the assizes and try all cases there.

1023. Do you think that by so doing you would improve the chance of getting a verdict in agrarian cases?

I think you would in all cases, and I think that you would obviate a great deal of hardship which is inflicted upon jurors at present. Jurors complain now that too many of them are brought together when juries are required. Whether it is from the number summoned, or whether it is that they are ordered to "stand by," they go time after time without serving, or else they are brought there when they are not wanted. If they were divided, as I recommend, you would not only bring the class that is required, but would save unnecessary attendences. I would allow fewer challenges, but not lessen the power to "stand by" on the part of the Crown. Then for quarter sessions only those from the division should be summoned, as at present, and they could try, as I think they do fairly try, all the smaller cases that are generally tried at the quarter sessions. There are occasionally cases which are of a serious nature, where I know that true verdicts are not given at the quarter sessions; but it is in the power of the Crown Prosecutor, if he thinks it advisable, to send them on to the assizes, which they often do. The only object at present of sending them to the assizes, that I can see, is, that they have the advantage of barristers prosecuting instead of the Crown Solicitor, if that is an advantage, and a judge trying. The chairman may be quite competent to try the case.

1024–5. Do you think that the present number of challenges is too large?

I do. I would not do away with the power of challenging altogether, but I would make it equal in all cases, that is to say, at the present time the prisoner is allowed to challenge six jurors in a misdemeanour case, and 20 in cases of felony; 20 I consider to be, as I heard the last witness say, a great deal too many. Take the case of two men tried together, as they both may have the right to

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challenge a certain number, it might be possible for them to exhaust the list. I would give the prisoner the right to challenge six in all cases, in case there should be anyone whom he fancies would be prejudiced against him. Of course I would leave open to challenge as many more as they can show just cause for challenging.

1026-7. Lord *Emly.*] In the cases of agrarian crime in the south of Ireland which have come under your notice, of course you have to get up the evidence for them; when you start to get up the evidence in any of those cases at the present time, have you the slightest hope that you will get a verdict?

Not the slightest hope in any important case. There is one thing I should like to mention with reference to a trial before the judges. I am of opinion that it would be considered fair by the people. There are certain Acts of Parliament under which the magistrates can try cases summarily; for instance, take the Larceny Act, which is the 18 & 19 Vict. In nearly all the cases where the prisoners under that Act get an option of how they will be tried, they elect to be tried by the magistrates, therefore showing that they have perfect confidence in the trial without a jury. The fact is, they know that in a case of that sort there is no feeling in their favour, and that it is a case in which, if they go to a jury, the chances are they will be convicted, and being tried in a higher court may get more punishment. I will take another instance in which magistrates also have jurisdiction, and that is the Act of Parliament under which a number of cases have been tried lately, namely, the 38 & 39 Vict., which is called "The Conspiracy against Property Act," under which the cases have been tried for what is called "Boycotting," that is intimidation. The defendants, on appearing before the Court, have the option of electing whether they will be tried summarily or go before a jury, and in all cases that I have seen they have gone before a jury and been acquitted. I can mention cases from my own neighbourhood where I have seen that happen.

1028. *Lord Privy Seal.*] Have you any difficulty in getting evidence when you have a case reported to you?

The greatest. At all times there is a great reluctance on the part of the people to give evidence, but where there is anything connected with the present agitation it is almost impossible to find out anything.

1029. That has very much increased, has it not?

It has been increasing every day, and now it is almost impossible to find out anything.

1030. Then, whatever the tribunal might be, there would be considerable difficulty in obtaining convictions, just as you had obtained the evidence?

Very great.

1031. In former times have you been engaged in agrarian cases and obtained convictions?

Yes.

1032. Lord *Emly.*] Was the qualification for a jury as high as 100 *l.* a year, that you stated you would like to see adopted?

I can scarcely give an opinion as to the exact amount. The last witness stated that the rating in Kerry was very low. In Tipperary, where I come from, in Waterford, and in part of Kilkenny, the rating is high. I would make it a high rating so as to have a better class of jurors.

1033. Would you make it as high as would be consistent with obtaining the necessary number of jurors for the trial of cases at the assizes?

I would. The Irish jurors, according to the present system, are not all of one class. Magistrates and the other classes may be all together. Very respectable people object very much to running the chance of being locked up with men with whom they have no feeling in common. I think that that deteriorates a great deal from the influence of the jury.

1034. Would such a qualification as you recommend admit a considerable number of jurors who were not landlords?

Oh, yes, decidedly.

1035. Would

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1035. Would it admit any considerable number of the large tenant farmers?
It would. I am speaking of the counties with which I am most familiar.

1036. And it would exclude the small tenants, would it not?
It would exclude the small tenants, who would have their work at the quarter sessions for the trial of smaller offences.

1037. You are not able to say how high you would carry the figures?
I could not without having a list of the rated occupiers of the different counties before me, which I have not at present, but which might be very easily obtained from the clerks of the peace. It is only the system that I would approve of. I would let the details be worked out according to the different counties.

1038. Have you found any very marked difference in the conduct of juries since the present agitation began?
The agitation was not so bad in our part of the country last spring as it is now; but I hear complaints and I know cases myself that could not be tried properly, where the prisoners got off. I have given instances here with reference to cases at the assizes where there have been miscarriages of justice since this agitation commenced.

1039. Can you compare the conduct of juries before the agitation sprung up and since?
Yes, I think there is more fear now where there is not actual intimidation; I think actual intimidation is the case in some instances, but there is more fear now. I am told there is more fear in the jury-room than there is out of it.

1040. Does all your evidence apply to the jurors as they were and as they acted before the beginning of this agitation?
It does; I think the class of jurors for trying important cases is not sufficiently good.

1041. Setting aside the present agitation?
Setting aside the present agitation.

1042. *Lord Privy Seal.*] I believe Waterford City and Kilkenny City are not actually in your district?
They are not.

1043. But you have an intimate knowledge of them, have you not?
I have to attend to assizes for the three counties and the quarter sessions too.

1044. *Lord President.*] Are you quite sure that a man who is rated at 100 *l.* a year would not be liable to exert his influence in the same way as a man who is paying only 20 *l.* a year or 30 *l.* a year?
I think they would be liable to influence. If they were not liable to influence I would not recommend a commission.

1045. Would you at the present moment feel any more confidence in getting a verdict from the evidence in one of these agrarian cases from a jury, every one of whom was rated at 100 *l.* a year, than you would from the present jurors?
That would depend a good deal upon the place.

1046. Take the county of Tipperary?
I would. I think they would have more interest and property at stake (independently of their conscience influencing them) to see law and order carried out

1047. I suppose the farmers of 100 *l.* a year are all members of the Land League?
Not all; many have kept aloof and many have given it a very qualified adhesion.

1048. Lord *Inchiquin.*] You draw a distinction between the cases tried at the assizes and the cases tried at the quarter sessions?
That is what I propose; I would not throw all on the best juries. If the cases are

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are very important and the Crown solicitor thinks it better not to try them at the quarter sessions, he can always apply that they may be sent to the assizes if he thinks the jurors are not sufficiently good. In a great number of counties the quarter sessions are only held in one place. I will take Kilkenny, for instance, the quarter sessions are held in the city of Kilkenny for the whole of the county of Kilkenny. In some places you would find that you would have very good juries upon one qualification, and in another place in the same county, with the same qualification, very inferior ones. That happens at quarter sessions. At the assizes they would be more generally drawn. That is one reason for altering the system.

The Witness is directed to withdraw.

MR. WILLIAM MORRIS-READE, is called in; and Examined, as follows:

1049. *Chairman.*] I BELIEVE you are resident magistrate for Galway Town?
I am at present.

1050. You have had official experience in other parts of the country, have you not?
The whole of my experience extends over 18 years in the county of Westmeath, with the exception of the last six weeks, which I have spent in Galway.

1051. Have you formed any opinion with regard to the way in which jurors perform their duties?
They have always performed them in the same way in the county of Westmeath during the time I have been there; that is to say, in any case of agrarian crime or serious outrages connected with land; if a Ribbonman formed one of the jury there never was a conviction.

1052. Was that owing to the perseverance of the individual member of the jury who might happen to be a Ribbon man?
Certainly. He was never convicted.

1053. Would it be generally the case that there was one juror who was a character of that kind, or would the sympathy of the jury collectively probably be engaged on the side of the prisoner?
As a rule, the sympathy of the people of the county of Westmeath was invariably with the prisoner, and against the law of the land. I am speaking now of the middle class and the lower class only.

1054. From what class would those jurors be usually drawn?
Latterly the petty jurors of the county of Westmeath have deteriorated considerably.

1055. Have you any date present in your mind when you say that?
Speaking generally, I should say for the last five or six years.

1056. But about six or seven years ago, I think, the qualification of the jurors was raised, was it not?
I never inquired very much into that, because our acts as magistrates were simply ministerial. I always attended the assizes regularly and watched the jurors, and I found that the result was invariably the same.

1057. Your conclusion is that, either from sympathy on the part of a particular juryman, or from other influences in a particular class of cases, there is no prospect of the jury performing their duty in a proper manner?
There never was in Westmeath during my time, and there is less now than ever there was.

1058. Do you believe that any mere change in the rating qualification of the jurors would bring into the jury box a more independent class?
I think that, unquestionably, if the franchise were raised you would get a better class of men in the county of Westmeath.

1059. Would

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1059 Would a considerable raising of the qualification not have the effect of eliminating at once a large proportion of the persons who are now liable to serve?

Do I understand the question to mean whether I would abolish them entirely?

1060. I will put the question in another way; would you still be able to get a jury if the qualification were considerably raised?

That is to say, would there be a sufficient number of men possessed of the higher qualification introduced to form a jury.

1061. Precisely?

I should say, unquestionably, in the County of Westmeath, there would.

1062. Have you any particular qualification to suggest, such as any pecuniary standard?

No; I would not suggest any pecuniary standard in particular, but, probably, it should be from 80 *l.* to 100 *l.*, or even a little lower; or from 65 *l.* to 100 *l.*

1063. Have you considered a question upon which evidence has been given by other witnesses, I mean the effects of the exercise of the right of challenge, which is now conceded to the prisoner?

I have been watching it every year at every assize.

1064. Can you state what the effect of the exercise of that right has been?

That very respectable men were, invariably, challenged on the part of the accused.

1065. I suppose we may take it that there would probably be upon the panel only a minority of what you would call the respectable people?

Quite so, on the late panels, that is to say, the panels of the last five or six years, owing to the fact that they are taken alphabetically.

1066. Are there any other causes which keep the better educated and more respectable jurors from taking their share of the service?

I think the men who are called on the panel as a rule in the County of Westmeath attend; I have never seen a failure of justice owing to the non-attendance of jurors.

1067. Then your conclusion with regard to the existing system is that in the case of a particular class of offences, and more particularly during the late excitement, there is very little prospect of getting a proper verdict from an ordinarily constituted jury?

There is not the slightest prospect of getting a conviction if one Ribbonman can find his way on the jury. In the County of Westmeath there is not the slightest chance of getting a conviction in these particular cases.

1068. Is it generally known to the authorities that a particular juror is a Ribbonman or not?

It ought to be.

1069. Should you say that it is?

I should say that it was, as a rule, known to the constabulary, certainly.

1070. Would there not be an opportunity offered of excluding that one Ribbon man when the list was called over?

If only one juryman happened to be a Ribbonman, a sub-inspector of police or a constable of police would be in a position, and in fact, that has been invariably done in the County of Westmeath to advise the Crown solicitor that So-and-So was a man of bad repute, or, in other words, a party man, and that he should be told to stand aside.

1071. If the Ribbonmen happened to be very plentiful you could not go on with that practice very long?

Certainly not. They are very plentiful in Westmeath.

1072. Then, in order to carry out justice effectually, I presume, you would propose that some other means should be resorted to than that of trial by jury as at present constituted?

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I heard it suggested just now by Captain Slacke, and I have heard it spoken of outside also, that the trial of these cases by the going judges of assize would be a very good remedy; and I quite agree with what Captain Slacke said, but I think that, though it might be inconvenient to have a third judge to form that tribunal, it would be better formed of three judges than of two, because there would then be a majority.

1073. Duke of *Marlborough.*] With reference to an answer which you have given as to Ribbon men being an element which operates on a jury against finding a proper verdict, do you consider that that exists at the present moment in the county of Westmeath?

It exists as strongly as ever. Of the two, I should say that it has gained strength owing to the land agitation, which did not exist in the county of Westmeath until the later months, say October, November, and December of 1880. That is in my district.

1074. Can you trace any connection between the Land League and the old existing Ribbon Society having been fused one with the other, and operating in the same direction?

My experience with regard to the operation of the Land League and its connection with Ribbonism, in the county of Westmeath, as I stated just now, is confined entirely to the early portion of this year, the Land League having only come into being in the early part of this year. I left Westmeath on 12th May last. During the time I was there, I did not remark any great change. Since I left Moatz troops and bodies of police have been brought into that town. From what I have seen, during the short time that I have been in the county Galway, I have no doubt whatever that a secret society which existed and the Land League have been fused into one. You may call it Ribbonism; I do not know whether it is actually Ribbonism or not, but its action is exactly the same. In the neighbourhood of Loughrea at present there have been two murders during the short time I have been in that district, altogether in connection with land.

1075. Confining my question to its probable effect upon the jurors, do you consider that the existence of the Land League is connected with the former existence of a secret association, acting upon the fears of persons generally in the execution of their public duties?

There is no doubt they would intimidate everybody who had anything to do with the jury.

1076. Are you at all aware what is the number in the jury lists of Westmeath?

No, I have no idea. I know the panel at each assize is a very large one.

1077. I suppose, with reference to the question which you answered just now, as to raising the qualification of jurors, you would not think it desirable that jurors should be entirely selected out of the class of the persons whom they were intended to try?

That would not be advisable.

1078. I will put the question in another form; you would not think it desirable that jurors should be selected entirely from a class altogether superior to the class of persons whom they were intended to try?

I am afraid if they were not, the results would be the same.

1079. Then you think the jurors selected, as they now are, from the class of persons whom they are intended to try, must inevitably result in a miscarriage of justice?

I should say so, certainly. At the summer assizes, two years ago, one of the petty jury was called, whose name was on the panel, by the Clerk of the Crown, and the Crown Solicitor got up and said, "Sir, you need not call that gentleman again, for he is on his trial in another court, charged with writing a threatening letter."

1080. I heard you allude just now to the Boyd murder case, in which the jury lists are framed in a different way; have you any remark to make about that?

I really know nothing about the framing of the panel.

1081. Lord

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1081. Lord *Ardilaun.*] As far as the present agitation is concerned, was there any failure of justice in the County of Westmeath?
I never remember a conviction in the County of Westmeath where the case was purely a Ribbon one.

1082. Was it generally the case that there were six for conviction and six for acquittal?
Either a disagreement or a bold acquittal; one of the two.

1083. Do you think at the present moment that the raising of the qualification would have very much the same effect upon the result of trials, I mean any moderate raising of the qualification such as you are speaking of, say, up to 65*l.* or 70*l.*; do you think that a man rated at 65*l.* or 70*l.* would be as much under the influence that prevents jurors from discharging their duties as the lower class of jurors?
It would be very hard to say what the effect would be of this particular course; but one would naturally expect that men taken from the class of better peasantry would be more likely to have respect for the sanctity of an oath than the other men.

1084. As a matter of fact, do you think the results would be very different at the present moment?
I am afraid at the present moment they would not.

1085. Lord *Inchiquin.*] Have you any reason to think that this conspiracy at Loughrea has been brought about by some men coming from a distance?
No, I have not; I am not aware that it has been imported at all.

1086. You think it has originated at that spot?
I think it has.

1087. You have no reason to believe it has come from Dunmore?
I think it exists in both places, and that there is an interchange of civilities of that kind between Dunmore and Loughrea. I have been there a very short time, but I have been there long enough to ascertain that.

1088. *Lord President.*] You were speaking about Ribbonism in Westmeath which you know so well; does Ribbonism confine itself merely to agrarian cases?
Almost exclusively to agrarian cases, and serious assaults arising out of land, of course, must be classed in the same category.

1089. Cannot you remember some cases affecting the railroad where Ribbonism came in?
There is no doubt but that many of the men employed were Ribbonmen.

1090. Therefore that goes rather beyond mere Ribbonism?
The men to whom reference is made were sworn in as Ribbonmen.

1091. That case had nothing whatever to do with land?
I think there was an acre of land in question there.

1092. Was it not supposed at that time that all the people employed on the railway were Ribbonmen?
Many of the railway employés at the time in Westmeath were Ribbonmen.

1093. Therefore Ribbonism went beyond the agrarian cases?
Unquestionably at that time it did; it pervaded almost everything. If you dismissed a man Ribbonism was called in.

1094. And it affected very superior men in the county at that time, did it not?
There is no doubt that many men of standing, whose names would astound the Committee if they heard who they were, were Ribbonmen.

1095. It is the fact, is it not, that some people are paying blackmail to avoid the effects of Ribbonism?
I believe so.

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1096. Have things always remained in this very bad state since you recollect, or have there not been times when there was comparative quiet in the country, and Ribbonism was not so active?

It entirely depends on whether there was any cause for it. Any eviction of a tenant, or any person taking land over another as they are pleased to term it, led immediately up to crime.

1097. Was not the period from 1873 to 1878 a comparatively quiet time in Westmeath?

Yes; we had peace in Westmeath during that period. From the passing of the Protection to Life and Property Act the peace was perfect.

1098. Did that affect the operation of juries?

I can hardly answer that question; I do not think it would, because if a Ribbonman were on the jury then he would act.

1099. It made no difference?

It made no difference in that respect, but it certainly made the greatest difference in the peace of the county.

1100. *Lord Privy Seal*] The specific parties were not tried?

The Lord Lieutenant at that time used his own discretion with regard to the disposal of the leading Ribbonmen.

1101. It was not a question for trial by jury, or trial at all?

No, simply incarceration.

1102. What is the present condition of the Ribbonmen in Westmeath?

It is just the same secret society now that it always has been.

1103. How far is it active in Westmeath at present?

Active immediately it is called upon to act, but passive as long as there is no opposition to it.

1104. Compare it with the state of things when the Westmeath Act was passed?

Up to the time that I left Westmeath I should say the country was in a better state than it was immediately previous, or 12 months or two years previous to the passing of the Protection to Life and Property Act. That is what is called the Westmeath Act.

1105. *Chairman*] But organisation is still there, and pervades the class upon which jurors are drawn?

Undoubtedly.

1106. Lord *Emly*.] Have the men who were arrested by the order of the Lord Lieutenant returned to Westmeath?

They have.

1107. Duke of *Marlborough*.] Did you not observe that when the Act expired in 1877 an increase of crime took place?

I do not think there was. The effect will never be forgotten in Westmeath entirely; at least, I do not think it ever will.

1108. You think, then, the effect remains now?

I do, because they believe it may be renewed at any time.

1109 You do not consider the state of Westmeath satisfactory, do you?

It was fairly satisfactory at the time that I left. As I have just stated, the Land League has increased considerably, and has broken out into what I may call song there, and they have become very troublesome.

1110. Then, in fact, the Land League according to your view is treading in the steps of the Ribbon Society, and giving it new vitality?

There is no doubt about that.

1111. *Lord President*.] Did your district of Moatz include any part of Roscommon?

No.

The Witness is directed to withdraw.

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MR. THOMAS HAMILTON, is called in; and Examined, as follows:

1112. *Chairman.*] YOU are a Resident Magistrate for Portarlington?
Yes.

1113. How long have you held that position?
I have held the office of resident magistrate for 14 years, and I have been in Queen's County for 12 years of that time.

1114. I suppose you have had a great deal of opportunity for watching the action of jurors in dealing with cases which have come under your notice?
Yes, at the greater number of quarter sessions and assizes which have been held during the periods I have mentioned.

1115. Should you be disposed, on the whole, to agree with the opinion expressed by the last two witnesses while you have been in the room?
I would to a great extent; but I would add to what they have stated, that I have no confidence whatever in the finding of jurors at present, either at quarter sessions or at the assizes, where the Crown prosecute, and particularly in any case in which there is anything of the Land League tinge.

1116. The evidence of the last two witnesses, as well as others, has rather pointed to the conclusion that in a particular class of cases, generally agrarian cases and assault cases, no confidence could be placed in the conduct of the jury?
None whatever.

1117. You rather put it in a different way, that the sympathy of the jury is against the Crown prosecution?
Certainly.

1118. Whatever the case is?
Whatever the case is; I observed that before the Land League had any existence in the country.

1119. Do you put that upon the general sympathy of the jurors, or upon their fear of the consequences to themselves?
No; it was the case before the Land League had any existence in the country. I put it on the general sympathy of the jurors with the accused as against the Crown, and particularly at the quarter sessions, from the jurors being, as I think, of too low a class.

1120. Then there is not only sympathy, but positive fear?
There is positive fear as well as sympathy.

1121. Have you observed any instance where direct intimidation has been brought to bear on jurors?
I cannot point to any particular instance in my district, and for this reason: the Land League system has only extended to Queen's County since the month of October last. At that time there was only one Land League branch in the county. There had been only one assizes since, and only two quarter sessions, and at none of these tribunals have any cases of any importance been brought forward. At present the Land League branches are numerous in every parish; there are 25 in my district alone.

1122. The movement has spread with extraordinary rapidity in that period?
Extraordinarily so, particularly in that county. It has been said that it was the last to take fire, but it kindled very rapidly when it did.

1123. Therefore, in cases arising out of any matter relating to land, you would probably expect to find a jury, the members of which were most of them connected with this organisation?
Certainly; a large proportion.

1124. Under these circumstances a mere alteration of the rating qualification would not carry you into a stratum in which those influences did not exist?
I think so, decidedly; at present the rating, although that is a matter I am not

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very cognisant with, is 40 *l.*; I do not think raising it to 50 *l.* or 60 *l.* would ensure the attendance of a sufficient number of jurors, or ensure righteous verdicts any more than the present.

1125. You stated that this organisation was spreading in the manner which you have described, and that farmers, both great and small, joined it, and that it was not limited to the classes?

Not at all; but great numbers have been driven into it by intimidation who would very gladly drop the association if they could, but for fear.

1126. *Lord President.*] What opinion would you give of the conduct of the Queen's County jurors before this agitation began?

I have frequently observed at quarter sessions before this agitation began that their verdicts were very unsatisfactory, and I have frequently heard the chairman of the county, who is a judge of the greatest experience, comment on the verdicts found by juries in cases that were perfectly plain in which they sympathised with the prisoner, and found verdicts of acquittal, where they should have found him guilty.

1127. Was that at the time when the present agitation had not commenced there?

Quite so. Before it had extended to the county.

1128. *Lord Privy Seal.*] Does that remark extend to the time before the passing of Lord O'Hagan's Act, or since?

I speak particularly of the period within the last 10 years. My experience extends to the period before that; but I speak more particularly of the period since the passing of that Act, that is to say, since the qualification was lowered.

1129. I think you were a constabulary officer before you were appointed a resident magistrate?

Yes.

1130. Your experience extends to other parts besides Queen's County?

I was a resident magistrate of Cork City for two years.

1131. When you were at Cork did you think the jurors performed their duty satisfactorily, or not?

I think not. I have frequently seen the contrary, particularly during the Fenian time. I have seen extreme difficulty in the great majority of cases for the Crown to obtain a verdict at all.

1132. Does that intimidation of witnesses, or the sympathy of witnesses towards the accused, affect the witnesses as well as the jurors?

It does.

1133. To any great extent?

Yes, I believe to such an extent that there is very great difficulty in obtaining any evidence at all in criminal cases, and when the evidence is obtained it is difficult, if not impossible, to obtain a conviction before a jury.

1134. In your county, I believe, there is not any great difference between religious sects?

None whatever. There is no sectarianism in Queen's County at all; that is never thought of.

1135. Lord *Inchiquin.*] If there was a trial by judges in lieu of a trial by juries, do you not think there would be sufficient evidence forthcoming without intimidation to bring about a satisfactory result?

I think the difficulty of obtaining evidence would still exist in the very same degree, but when the evidence was obtained in cases that were being prosecuted before judges, then such a trial would ensure proper verdicts.

1136. Then what you recommend is, that there should be a commission granted?

I would certainly say so. I should think the same thing would apply to the other courts. I was listening to my brother magistrate, Captain Slacke's ideas upon the subject, but I confess I do not quite agree with him in his idea as to the

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the quarter sessions, which is a very important court, to which we as magistrates may return any case for trial, except cases of murder.

1137. You think it is just as important as the other?
I do; I would suggest, as regards the quarter sessions court, that the abolition of the jury must be provided for by the chairman, or the county court judge, who is a lawyer of experience, sitting with magistrates, and that the quarter sessions court should deal with all cases that come before that court in the same way that the magistrates at petty sessions do. I have every reason to suppose that there is a reasonable confidence in the administration of justice by magistrates at petty sessions. I think the same system if extended to magistrates at quarter sessions, under the guidance of a county court judge, would answer equally well.

1138. You think the petty sessions courts generally give satisfaction?
I do.

1139. Do you not think it is very often the case that defendants get magistrates at petty sessions to send cases for trial, in order that they may be sent before a jury, and thereby the penalty may be evaded?
I know in every case in which there is anything of a political or sectarian complexion they would invariably try to go before a jury, rather than submit to the jurisdiction of magistrates, but in ordinary cases, such as petty larceny, where the defendants have the option of electing to be tried by a jury, they elect to be tried by the magistrates, showing that they have confidence in their decisions. In the other cases they look upon it as a certainty that no jury will convict them.

1140. Do you think that a court of trial, composed of a chairman and a certain number of magistrates in quarter sessions, would give satisfaction?
That would be my idea.

1141. Lord *Emly.*] Do you consider that such a tribunal as Lord Inchiquin suggests would give satisfaction in land cases?
No, I do not. I say that I believe they would find according to the evidence.

1142. In answer to Lord Spencer, I think you stated that the juries in the City of Cork had not behaved very well during the Fenian time; am I correct in my recollection that there were a great many convictions?
In many cases they did not, but there were also many convictions.

1143. Still there was a considerable number of convictions, was there not?
There was a very fair proportion at one time, particularly at one special commission.

1144. Earl of *Derby.*] I think I may take it from what you have said, that you do not consider any alteration that would be practical in the way of constituting juries would serve to make them efficient?
I do not at the present time, with the present feeling of the country.

1145. Are you speaking merely of the temporary, as we hope it is, agitation, or the feeling which has existed for some years past?
For many years past I have thought the working of the jury system at quarter sessions was not satisfactory, and particularly since the Land League agitation has sprung up.

1146. You do not think that any system of lessening the number of peremptory challenges by prisoners, or even raising the qualification of jurors, would meet the difficulty?
I think it might to a certain extent. I think raising the qualification would ensure a better class of men. Lessening the number of challenges, or the right of the accused to a certain number of challenges, would prevent them setting aside many jurymen whom they know would find a right verdict. Their object in that instance generally is not because a man has a prejudice against him, but because he will find a verdict according to the evidence.

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1147. In your view those are palliatives, but they would not sufficiently meet the evil?
I think not in the present aspect of the country.

1148. Duke of *Marlborough.*] Have you had any experience in cases of summary jurisdiction proceedings at petty sessions?
It is my every day work.

1149. Do you find that in any cases the prisoners elect to be tried by summary jurisdiction?
I do; very frequently in cases of petty larceny where they have the right of electing to be tried at the petty sessions, they prefer being tried by the magistrates, in fact, as a rule they do.

1150. So that in forming an opinion as far as one can from those cases, there would be no great sense of injustice, because there was summary jurisdiction in other cases?
I would say not; I think the same summary jurisdiction, that is to say, the quarter sessions court, might be carried out in the same way. I see no reason to doubt that it would work satisfactorily.

1151. Of course in cases where the prisoner is perfectly well aware that the jury would acquit him, there would be dissatisfaction at any change?
No doubt there would be dissatisfaction on the part of the prisoner.

1152. That would be the very reason for making the change?
Precisely.

The Witness is directed to withdraw.

Ordered, That the Committee be adjourned to Tuesday next, at Twelve o'clock.

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Die Martis, 28° *Junii*, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Monck.
Earl of Derby.	Lord Penzance.
Viscount Hutchinson.	Lord Emly.
Lord Tyrone.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. HENRY HAIGH BOTTOMLEY, is called in; and Examined, as follows:

1153 *Chairman.*] I believe you are Sub-Sheriff of the county of Antrim?
I am.

1154. How long have you held that office?
For 23 years in succession.

1155. I need not ask you whether in that capacity you have had considerable experience of the working of the Irish jury laws?
I have in my own county, and in some of the adjoining counties.

1156. The sub-sheriff has, I believe, the preparation of the panel?
He has the preparation of the panel from the jury book.

1157. Would you state to the Committee your opinion of the working of the Acts of 1871, and the amending Acts of 1873 and 1876?
So far as the county of Antrim is concerned, and as regards common jurors, for the trial of both civil and criminal cases, I think the Act has worked, on the whole, satisfactorily in that county.

1158. Have there been any occasions on which judges of assize or chairmen of quarter sessions have expressed a feeling of dissatisfaction with the conduct of juries?
Occasionally the judges of assize and also the chairman of the county have expressed surprise at some of the verdicts returned by the juries.

1159. You were examined, I think, before the Committee of the House of Commons in the year 1873?
I was.

1160. Upon that occasion I see that you expressed an opinion that the character of both the special and the petty jurors in your county had considerably deteriorated?
I considered at that time, and I still consider, that the special jurors have deteriorated very considerably in the county of Antrim. There was also considerable deterioration in the intelligence of the common jurors for some time.

1161. I presume that the legislation of 1873 and 1876 was intended to counteract that by raising the qualification?
Yes, I think it has had that effect in the county of Antrim; the special juror's qualification, I think, was not changed by the legislation of that time, since the Act of 1871.

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1162. Am I right in thinking that with regard to the rating qualification for house property in the counties, the Act of 1876, in some counties, lowered instead of raising the qualification?

I believe that in some counties the qualification was lowered.

1163. You do not remember whether that was so in the case of the county of Antrim?

I do not. The Act of 1871 is the original Act, fixing the qualification in Antrim at 50 *l.*

1164. But the qualification was altered under the amending Act of 1876, was it not?

I do not see in the Act of 1876 any change in the qualification.

1165. You have, I think, some observation to make with regard to the manner in which the jurors' lists are revised?

Yes; I think that although there has been great improvement in the revision of the jurors' lists in trusting that revision to the chairman of the county, yet that there is not sufficient care exercised on the part of the clerks of unions and the poor rate collectors in the preparation and correction of those lists. The lists are very full of errors.

1166. And therefore you suggest a more frequent revision of the lists?

I would suggest that as regards the rate collectors, who in the first instance return the list, and as regards the clerks of the unions, who afterwards collect those lists and put them together, there should be some more stringent means taken to make them do their duty more efficiently if possible.

1167. Have you any observation to make with regard to the present system under which the panel is formed, by selection from the list by alphabetical rotation?

The only observation that I would venture to make is this: that although I consider the principle of alphabetical selection works favourably in the county of Antrim, yet I think that the sheriff should not be restricted to taking the first letter of each series of letters, but that he should be allowed in some way to range through the letters, especially those which contain the largest number of names. His being restricted to taking the first letter at the end of three years leaves a very considerable residuum of jurors who have not served at all, and who are never called upon to serve.

1168. But are we to understand that if there is such a residuum of jurors left under particular letters, those letters, I mean, which are most numerously represented, that residuum is not called at all?

I think that the result would be that they are not called at all; because the new book is furnished to the sheriff, and he virtually commences on the new list at the end of the two years, having exempted all those who have served in the previous two years; and therefore the names of those who have served previously will be returned again in the third year book, and under some letters, for instance, under the letter "M" or "Mc," in which the greater number of jurors are, a large residue of men will be left who do not serve at all, which creates some feeling of dissatisfaction amongst their neighbours.

1169. I am under the impression that it has been stated before this Committee, that under those circumstances the whole panel is sometimes formed out of those residues?

I have heard it stated that that would be the result of adhering strictly to the alphabetical selection in other counties. In my own county it has never reached to that stage.

1170. In your own county the residue has escaped, as I understand you to say?

Yes, in my own county there is an unusually large number of jurors on the jurors' book.

1171. It was suggested, I think, by one witness, that the difficulty might be got over if the jury list was divided, not under the headings of the different letters, but taking 25 names, we will say, on each page and then beginning with the

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the first name, and then taking the second, and then the third, so that each page would be exhausted simultaneously?

Would that be still adhering to the alphabetical selection, or departing from it altogether?

1172. It would be starting with the alphabetical order, but instead of dividing off the list according to the different letters, it would divide them into lots of 25. Would you think such a system a desirable one?

That would possibly make a change, but I fail to see that it would altogether do away with the residuum under the more frequently recurring letters eventually.

1173. With regard to the provision in Section 4 of the Procedure Act of 1876, under which jurors not attending are liable to a fine; is that a section which is within your knowledge regularly enforced?

In the case of jurors who do not attend and answer to their names at the first calling of the panel, a fine is, in the words of the section, ordered by the Court to be paid and recorded by the officer of the court against them; that is for not attending without sufficient excuse, either from illness or other sufficient cause; but those fines are not very strictly enforced in my own county.

1174. Are they sufficient in amount to ensure the attendance of jurors who might, for reasons of their own, be unwilling to attend?

I have never found, in the county of Antrim, any unwillingness to attend from improper or capricious motives, and therefore I think that in that particular county, and I may say in the northern province, the fine of 40 *s.* is sufficient.

1175. With regard to the special jurors, are you still of opinion that they, as a class, do not command the confidence which it is desirable that they should command?

I am certainly of that opinion, which is fortified by the opinion of a great number of the leading merchants in Belfast, and amongst others, of a former President of the Chamber of Commerce.

1176. Lord *Penzance.*] Are you speaking now of civil cases?

I am speaking of civil cases entirely.

1177. *Chairman.*] You are of opinion that the present special jurors are not of so high a class as those who were formerly obtained by the sheriff exercising his power of selection?

They are not of the same class, nor are they nearly of so high a class; that is, taking them, as a whole, on the panel. There may be a few names of the same class, but I should say that the great majority are of a different class.

1178. I think that when you were examined in 1873, you suggested that it would be difficult to get a really good panel without a power of selection being entrusted to some public officer. You gave this answer, "I cannot see that by any process of revision, no matter how carefully it is attended to, there will not remain some jurors who ought fairly to be excluded from the panel as being illiterate, or above age, or from other reasons; and, I think, the sheriff has the means of obtaining information with regard to the jurors throughout his county as large as any other person;" are you still of that opinion?

I am still of that opinion.

1179. Were you speaking then of the special jurors?

No, I was speaking then of the common jurors.

1180. But that power of selection which the old law placed in the hands of the sheriff was one of the reasons which led to that law being viewed with a considerable amount of suspicion, was it not?

I am quite aware that it was viewed with suspicion at the time, and that reason was given for the change, but I have not been able to find out that the suspicion was very well grounded, as far as I have made inquiry.

1181. But should you now go so far as to say that it was advisable to revert to that selection?

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No; my views are, shortly, that the alphabetical selection should be adhered to, subject to the qualification of jurors being even possibly still raised in some counties in Ireland; but that the sheriff should be given a discretion, in the alphabetical selection, of rejecting jurors for sufficient reason; for instance, if he is aware that any juror has been, or is likely to be, intimidated, or prevented from doing his duty, or if he has assisted in giving perverse verdicts, or for other sufficient reasons which the sheriff might be obliged to give on oath, I think that he should be still entrusted with the power of setting jurors aside in the preparation of the panel.

1182. Lord *Penzance.*] You would not let the sheriff have a power of selection, but a power of rejection?
A power of rejection.

1183. Earl of *Derby.*] Would you admit political reasons, I mean such a reason as this: that a man is reasonably suspected of being mixed up with the Fenian organisation?
I would, certainly.

1184. *Chairman.*] Is the sheriff likely to be fully informed upon points of that kind with regard to most of the persons on the jurors' list?
I should fancy that he would be very well informed on the subject, and that he would have the means of getting information from trustworthy sources?

1185. Then that rejection would take place at the opening of the sessions when the panel was made out?
When the panel was made out. He should still make his panel on the alphabetical selection, giving a reason in a separate schedule, not on the panel itself, for the rejection of such jurors as he had been compelled to reject by his sense of duty.

1186. Lord *Inchiquin.*] You think that he should record his reason?
I think so.

1187. *Chairman.*] Is it not conceivable that a particular juror might be very ill qualified to try a particular case when it arose, who might not necessarily be disqualified to try nine cases out of ten?
I certainly think it is quite possible.

1188. But the sheriff's rejection in the manner which you propose would exclude such a juror from the jury box, no matter what the case was, would it not?
Yes; there would be a difficulty about that.

1189. The right of challenge which is now allowed to the Crown, I suppose, is intended to afford an opportunity for keeping out of the jury box persons who clearly are unfit in a given case?
It is so intended.

1190. What opinion have you formed of the manner in which the right of challenge is exercised?
In the particular county with which I am connected the challenges on the part of the Crown are very sparingly exercised indeed; the principal challenges are to persons in the class of publicans.

1191. I think you said that you are disposed to recommend that the rating qualification should be still further raised?
I do not speak so much of my own county, but I would think that it is desirable that it should be raised to some extent in other places.

1192. Do you think that by raising the rating qualification a few pounds, you at once get into a class of men who differ altogether from the slightly lower class admitted under the present qualification?
I meant to say that the higher you go as regards rating you get men of greater intelligence, and possibly greater independence.

1193. But I suppose that, in many counties, if you went much higher in the rating qualification you would scarcely get a panel at all, would you?
I believe there would be a difficulty in many counties.

1194. Within

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1194. Within your experience is there a disposition on the part of the better class of jurors, men of means and education, to shirk duty on the jury?
There is, as regards the common jurors. Under the Act of 1871, gentlemen in the position of grand jurors are liable to be summoned as common jurors; and they certainly very strongly object to serving as common jurors, and generally find some means of escaping from the service.

1195. And I suppose the right of challenge which is allowed to the prisoner works rather in the same direction, does it not; that is to say, that the higher class of jurors would be more frequently challenged than the lower class?
That is very frequently the case even in the county of Antrim.

1196. Do you think that the presence in the jury box of a larger number of this better class of jurors would exercise an appreciable effect upon the conduct of the jurors?
I am scarcely prepared to say so. I have known instances where even the presence of one gentleman of a superior class has had very considerable influence over 11 others of a very different class; but that would be principally in civil cases, and not so much in criminal cases.

1197. From what class are the petty jurors habitually drawn now in your own county?
They are drawn from the shopkeepers of Belfast up to a particular rating, and also from the farming classes, both large farmers and small farmers, as the smaller rating is included in the larger rating.

1198. To the best of your belief, do they do their duty with regard to their oaths, independently?
I think so.

1199. And you would say that of all classes of cases?
I would say that of all classes of cases.

1200. *Lord Privy Seal.*] Do you mean that the present special jurors are sometimes found not sufficiently intelligent to deal with cases of a difficult kind?
Yes. In the county of Antrim, Belfast being the last town on the North Eastern Circuit, the special jury cases are sometimes of a very complicated and heavy nature.

1201. Lord *Penzance.*] And technical?
And technical also. A purely rating system has produced a class of jurors who are not in the same position as, in my opinion, the special jurors should be, or as they were formerly; that is to say, there is a considerable mixture; there are some of the large merchants in Belfast and there are a number of shopkeepers having houses, or places of business, of considerable rating. They are not on the whole nearly so intelligent as they used to be, or so discriminating in their verdicts, and there is not the same confidence placed in the special jurors.

1202. *Chairman.*] Is there a difficulty in getting the higher class of jurors to act?
There was no difficulty under the old system.

1203. But I am speaking of the present state of things?
At present the higher class of jurors have an objection to sit with a lower class of jurors, in some instances.

1204. Are efforts ever made by the judges to ensure or compel their attendance?
The attendance is very good. The jurors are also chosen by ballot, so that an enforced attendance would not be a remedy for that.

1205. Is it the case, that the special jurors' qualification has not been raised since the Act of 1871?
I am not aware that it was raised in the county of Antrim.

1206. Lord *Penzance.*] Does a difficulty arise at all from bringing in the jurors from the county, who do not understand business matters?

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No, the difficulty does not arise from that. It arises from a number of people, say in the position of pawnbrokers, photographers, and publicans, being now placed upon the special jury list, in consequence of having places of business highly rated, and not being so competent to deal with mercantile cases.

1207. The old definition of a special juror was that he was a merchant, was it not?
There were several others. The qualification was not very strictly defined.

1208. But now it is a mere rating qualification which includes shopkeepers, who know nothing of mercantile affairs?
Yes; formerly the large landed proprietors and others used to sit with the leading merchants on special juries.

1209. *Lord Privy Seal.*] At present, with the present rating qualification, the special juror has a net annual value of 150 *l.* in respect of lands and so on, in the county of Antrim, and a net annual value of 50 *l.* in respect of lands and tenements in any city or town?
Yes.

1210. *Lord President.*] Would the special jurors' list for Belfast be mixed for the county and the town?
It is a mixed list from the county and town jurors put into a book by itself, called the special jurors' book.

1211. There is no separate special jurors' list for Belfast alone?
No; the special jurors have also to do duties as grand jurors at the quarter sessions in case they are not exempt by being magistrates

1212. *Lord Privy Seal.*] So that, I suppose, you have on the list farmers rated at 150 *l.* and upwards, and you have shopkeepers or other citizens rated at 50 *l.* and upwards?
Yes, that is the case.

1213. And yet you say that the qualification does not produce a satisfactory class of special jurors?
I am of that opinion, and the same opinion has been expressed by some of the judges and others.

1214. Have you formed any opinion as to the extent to which you would raise the qualification?
I think as regards special jurors I would be disposed to return to the old system; I do not see any objection to it as regards special jurors. The suspicion which was said to attach to the selection by the sheriff related to common jurors, I think. But if there is no change made in that direction, I think the rating qualification in towns, in Belfast, for instance, might be made even higher.

1215. *Chairman.*] I see, looking at the two Acts, that for petty jurors the qualification in respect of house property was lowered by the Act of 1876; it appears to have been 12 *l.* in 1871, and it appears to be 10 *l.* under the Act of 1876?
Twelve pounds was the qualification in the schedule to the Act of 1871.

1216. Therefore, the amending Act lowered the qualification to that extent instead of raising it?
I believe that is so.

1217. *Lord Privy Seal.*] But you would prefer, in the case of special jurors, to get rid of the rating qualification altogether?
I certainly think that you would have a very superior class of special jurors.

1218. By reverting in that case to the old qualifications?
Yes.

1219. Lord *Penzance.*] That would not touch criminal matters?
That would not touch criminal matters, except in the case of special commissions which are occasionally issued.

1220. *Lord Privy Seal.*] What difference does the issue of a special commission make as to the jury?

I understand

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I understand that for a special commission the jurors are taken from the special list, but I am not sure as to that, and I may be mistaken. I have not had any special commission in the county of Antrim.

1221. You propose, as I understand, to revert to the freehold and leasehold qualifications which existed before the Act of 1871?
Yes.

1222. Would those qualifications produce a sufficiently large body of special jurors?
In the county of Antrim they would.

1223. You suggested that the sub-sheriff should have the power of rejecting certain names from the jurors' list, and that he should justify his rejection by giving reasons upon oath?
That is what occurred to my mind.

1224. But would there not be many cases in which he would not be able to state any facts which could be the subject of an oath, and in which he could only swear that he had a suspicion?
There might be such cases.

1225. Do you not think there would be a great many such cases if the power was seriously exercised?
I really could not say. I think that the same class of jurors in many counties would come up at the assizes; possibly the same men would come up again; and if the sheriff had sufficient grounds for rejecting them from their previous conduct, I think he might have given to him the power of rejection, provided he were obliged to put his reasons in writing, and to verify them.

1226. Then in that case his reason would be that such a man had, in his opinion, given an improper verdict upon some former occasion?
That would be one reason.

1227. You said that the rate collectors and, I believe, the clerks of unions, did not, in your opinion, do their duty as efficiently as they might in the matter of the revision of the jurors' lists?
I stated so.

1228. Can you suggest any way by which that might be corrected?
I have suggested that possibly some more stringent means should be taken as regards these rate collectors, to ensure a more careful revision of the jurors' list. I think they are in the habit of taking old lists, and handing them in again without taking very much personal trouble. As a proof of what I state I have in my hands several of the panels for the county of Antrim, one for 1878, in which a great number of jurors appear returned by the constabularly as "not served." The reason for non-service is given by the constabularly, who do their duty very faithfully, and the reasons show that lists had not been properly prepared or revised, that is to say, that jurors had changed their residence or departed altogether, and gone away, or in several instances had died.

1229. Earl of *Derby.*] Is that merely carelessness, or is it want of organisation?
I think it is carelessness a good deal.

1230. *Lord Privy Seal.*] Who is responsible in the first instance for forming the lists?
The collectors of the rates return certain lists of persons subject to the provisions of the statute.

1231. To whom do they return them?
To the clerk of the union; he gets these lists printed.

1232. Is he supposed to exercise any control over the collectors?
Yes; I think his duties, as defined by the Act, are to do so.

1233. Then what does he do with the list?
They then goes with these printed lists before the chairman of the county.

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1234. The clerk of the union submits them to the chairman?
Yes, and the collectors are there also, so that the chairman may ask any question of them. The chairman gets the assistance now I believe of the quarter sessions Crown solicitor, who attends the revision, but the lists contain a great number of names, and there is not the same attention paid to the revision of them as is paid to the revision of the Parliamentary voters list where, on each side, there is considerable contention, so that these mistakes are not detected.

1235. Is the clerk of the union responsible to any higher official for the discharge of his duty?
I think he is liable to a fine, if I recollect rightly.

1236. Is he liable to be fined by the chairman?
Yes, but that is merely for making out wilfully a wrong list; it would not, I think, meet the case of want of care.

1237. Is he and are the collectors specially paid for performing these functions?
They are still paid. I understood that they claimed payment, both from the guardians of the poor, and also from the grand jury; but I am not aware that they get paid by both those bodies.

1238. But are they paid specially and separately for the performance of those duties?
They are; I believe they are paid out of the rates.

1239. *Lord President.*] Your remarks have been principally directed to the special juries; with regard to the other juries, are you pretty well satisfied as to the way in which they have done their duty in your county?
I am.

1240. They have done their duty in party cases, which I suppose prevail to same extent, from time to time, in Antrim?
We have frequently had party cases, cases of riot unfortunately there, and on the whole the jurors have done their duty.

1241. The riots at Belfast, for instance?
A good many cases are returned for trial at the assizes from time to time.

1242. And there has never been any difficulty with regard to them?
There have been occasionally verdicts which have rather assumed a party complexion; but, on the whole, I think the jurors have acted fairly.

1243. You spoke of restoring some power of rejection to the sheriff, or giving him some power of rejection; would not that rather tend to bring about a return of that suspicion to which you referred which existed as to the manner in which the sheriff formerly made out his panel?
I think it is extremely likely. I also think it would possibly add very much to the present unpopularity of the sheriffs in Ireland.

1244. Did your suggestion as to giving this power of rejection to the sheriff apply to the common juries as well as to the special juries?
Yes, but to the common juries alone.

1245. In your county I suppose there is a mixture of Roman Catholics and Protestants?
Yes.

1246. Are the Roman Catholics to be found in every part of the county, or in particular districts?
In every part of the county they are to be found; there are greater numbers in particular districts of the county.

1247. Are they to be found among the richer people in the county, or generally among the poorer?
They are not so much to be found among the richer classes.

1248. Then

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1248. Then if you raised the qualification, as I think you suggested, would not that strike out a good many Roman Catholics?
I think it would have that effect.

1249. I suppose it is desirable in the interests of the administration of justice that there should be a fair admixture of the two on account of the party questions which arise?
I think so, decidedly; possibly the power of rejection without an increase of the qualification might meet the difficulty in some cases.

1250. What is the amount of service exacted from jurors in Belfast, for instance?
They have complained very much of having an undue amount of service there in consequence of there being, in addition to the assizes and the quarter sessions, a Recorder's Court there, for although the jurors of the Recorder's Court are from a different list, the county list, yet the same men have to appear there, so that they consider themselves overworked in the county of Antrim.

1251. How often are they summoned in the county of Antrim?
Having served at either the assizes or the quarter sessions they are not liable to serve again at either the assizes or the quarter sessions for two years; but they may be summoned to the Recorder's Court, which I think sits during six months in the year once a month.

1252. Then they are not summoned, practically, oftener than once in two years?
Not to the County Courts, properly so called, but they may be occasionally summoned to the Recorder's Court sitting in Belfast.

1253. Are there any difficulties now as to jurors from the country being kept in Belfast, and making complaints as to their being kept from their duties at home?
There are frequent complaints made, and I think there are a great number of cases of extreme hardship upon jurors, because the assizes in Belfast last considerably longer than in other circuit towns, as I understand, except in some in the South.

1254. I suppose that that difficulty always existed?
It did to a certain extent, but not so much so as lately.

1255. Lord *Penzance.*] How long do the assizes last in Belfast?
They average about a week or a little more.

1256. *Lord President.*] Can you suggest any remedy for that difficulty?
I have ventured to make a suggestion which was, I may say, made to me by the Clerk of the Crown for the county of Antrim, who is a very intelligent officer, namely, that a certain number of jurors might be told off for service out of the large panel on particular days and the others excused for the time. He has greater experience in many ways than I have, and he thinks it would work satisfactorily.

1257. Do you think that the system of having the juries in Belfast mixed from the county and city panels works well?
I do.

1258. We had some evidence the other day that the revision of the list, which now takes place only once a year, does not take place often enough; what is your opinion upon that?
I think, if the revision was strictly dealt with, once a year would be quite sufficient.

1259. Lord *Inchiquin.*] With regard to your opinion as to giving the sheriff discretion to exclude names, do you not think that it would be much more satisfactory to give that discretion to the judge?
I think it would be much more satisfactory if it could be worked out in that way.

1260. Would not the judge be much more likely to know if jurymen had

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disgraced themselves in any way by particular verdicts which had been given on former occasions?

I do not think so.

1261. He might get information through the Crown Prosecutor, I suppose?

He might possibly get information from the Crown Prosecutor.

1262. At present, if objection is taken before the judge tryers are appointed, are they not?

That is, if an objection is made to the entire panel, or if there is cause given; but that is a very rare occurrence, at least in my part of the country.

1263. Do you not think that it would be advisable to give the judge the power of hearing any objections that might be raised to a juryman; and would not that be a better plan than that the sheriff should give reasons for his objections?

I think a trial before a judge would be more satisfactory; I do not mean to the people altogether.

1264. But for the ends of justice?

For the ends of justice.

1265. I do not know whether you have had any experience in other parts of Ireland?

I have had none, except in the northern province.

1266. Do you think that all through the northern province the juries have done their duty during the last few years?

I am not prepared to speak as to the entire province; but in the surrounding counties to Antrim I believe they all have done their duty fairly.

1267. And you would yourself be perfectly satisfied with the common juries in those counties of which you have experience?

I should be quite satisfied.

1268. It was suggested by one of the witnesses here that it would improve the verdicts in some parts of the country if a certain proportion of special jurors were mixed with the ordinary jurors; what do you think of that proposal?

In some counties I do not think it would have the effect which might be expected. I think that possibly it might have a tendency to set class against class, and create a certain amount of obstinacy on the part of the common jurors who associated with the others.

1269. Do you think the special jurors would not like sitting with the common jurors?

I think there would possibly not be an agreement between them.

1270. Then there would be no more likelihood than there is at present of their arriving at a verdict?

I should fear not, unless they were all special jurors.

1271. Lord *Penzance.*] With regard to this idea of rejection by the sheriff, first of all is it to be a rejection from the jury list, or from the panel?

I contemplated that it would be in the preparation of the panel.

1272. You would not propose to strike the name off the list, but you would give the sheriff a power in preparing the panel to leave the name out?

I would give him the power of leaving the name out, giving his reasons.

1273. Does that apply equally to special jurors and common jurors?

Only to common jurors. I think it would not be necessary to apply it to special juries.

1274. The panel would be the same, I suppose, for civil and criminal cases?

It is so.

1275. And, therefore, the effect of it applies both to civil and criminal cases

Yes.

1276. If it were established, would you contemplate that the sheriff would have many such names to strike off?

I fancy that in some counties he would have a good many.

1277. But

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1277. But speaking of those counties with which you are familiar, would that be the case?
I do not think he would have many to strike off there.

1278. If that power existed, you do not think it would be of much use?
I do think it would; prior to the passing of the Act of 1871, I frequently exercised the discretion of leaving out men whom I knew to be opposed to the Government.

1279. Do not such men find their way on to the panels now?
I am sure they do.

1280. Then it would be of use, would it not?
Yes, but it would not be called into exercise so frequently in Antrim; very seldom, indeed.

1281. You have no great need for it there?
Not there.

1282. As I understand you, the juries in Antrim do their duty very well as it is?
I am of that opinion.

1283. In all kinds of cases?
I think so.

1284. But there are cases, you say, in which the judges have been dissatisfied with the verdicts?
Occasionally there have been.

1285. Have those been verdicts of acquittal in criminal cases?
Yes.

1286. Upon tolerably plain evidence?
Altogether against the evidence.

1287. That has happened in Antrim?
It has.

1288. But not very frequently?
Not very frequently.

1289. Do you think that it has happened more frequently of late?
I think it happened more frequently immediately after the passing of the Act of 1871. It has got back again now into a better system since.

1290. How did the Act of 1871 bring that about?
It brought in a different class of jurors altogether.

1291. Then the amending Acts have reduced that trouble?
For some reason or other the complaints have not been so frequent.

1292. You hardly know to what to attribute it?
I do not.

1293. Still it is the fact that there have not been so many complaints?
There have not. Occasionally the judges, I would not say at every assizes, but at some assizes, do express their surprise at a verdict, and the chairman also does the same at sessions.

1294. That you have known?
I have known it very recently.

1295. Has that been in cases connected with agrarian offences?
There would be very few cases of that character in Antrim.

1296. But have those cases, in which there has been dissatisfaction, been cases of that character?
Sometimes party cases, and sometimes ordinary cases.

1297. Cases of assault, and such things?
Yes, frequently.

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1298. Then upon the whole, you would not propose much change in Antrim?
No, I would not.

1299. There might be this power of rejection by the sheriff, but you do not think that it would be very often used if he had it?
I do not think it would in the northern counties.

1300. Supposing that a juror ought to have his name taken from the panel for such reasons as you have suggested, the sheriff would be more likely to know of the existence of those reasons than the judge, would he not?
Yes, I should think so. He could only give information to the judge.

1301. The judge, who went one circuit at one time, at another time would go another circuit, so that he would not come in contact with the same set of men perhaps for two or three years?
He would not.

1302. Earl of *Derby*.] I gather from your evidence that you have no experience of a state of society such as unfortunately exists in some parts of Ireland where, in agrarian cases, there is a general agreement among the peasantry to defeat the law?
I have no personal experience of that; I only know it through the public newspapers.

1303. Therefore, in point of fact, you think we have reason to be satisfied with the way in which the jury system works in Antrim?
In Antrim, I think so.

1304. Do you think that the upper classes, the richer classes in the county, do their duty fairly in serving as jurors, or do you find reluctance on their part?
I find a disposition to avoid serving on the common juries, on the part of the richer classes.

1305. And do you think that, as a matter of fact, whether by getting their names left out from the lists, or by the fines being remitted, they escape their fair share of service?
I think they do manage to escape.

1306. You think that that might be obviated by greater care in making up the lists, and by greater strictness in the imposition of the fines?
By greater strictness in the imposition of the fines; but I do not know that they are omitted from the lists.

1307. Generally speaking, I suppose we may take it that, in the cases where you say unsatisfactory verdicts have been given, it has been rather owing to want of intelligence on the part of the jury than to class or party prejudice?
Sometimes it has been owing to want of intelligence, but more frequently to perversity.

1308. Have you any experience of the right of challenge being largely used and abused on the part of the prisoner?
I have frequently seen the right of challenge, as I thought, abused on the part of the prisoner, by the exclusion of all the intelligent men from the jury.

1309. Do you think that any advantage would be gained by a limitation of that power of peremptory challenge?
I am not quite prepared to give an opinion upon that point.

1310. *Chairman*.] With regard to some riot cases, which I think you said were tried in the City of Belfast, and in which the jury did their duty very satisfactorily, would those juries be, of what you might call, a mixed composition, that is to say, mixed in point of professions, and so on?
Yes, they would be mixed, and also very frequently as to religion.

1311. There would be nothing approaching to identity of interest between them and the persons whom they would be trying?
No connection whatever; they would be widely different.

1312. Lord

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1312. Lord *Ardilaun.*] You are aware that the action of juries in the south and west of Ireland has not been at all satisfactory?
I am aware of that.

1313. Do you think that if trials of cases of agrarian crime, from the south and west, were moved to Antrim and other northern counties, the verdicts in those cases would be satisfactory?
I think they would be more righteous and proper verdicts.

1314. Do you know what has been the general result of any such cases being moved?
I do not remember any change of venue to Antrim in a criminal case, except at the Winter Assizes, when the counties are grouped together, and we have prisoners tried from other counties rather further south.

1315. Have the verdicts generally been satisfactory?
The verdicts in Antrim have been satisfactory.

1316. Even in agrarian cases?
Yes, in some agrarian cases.

1317. *Lord President.*] What counties are grouped at Belfast under that arrangement?
Monaghan, Armagh, Down, Antrim, and Carrickfergus, as far as I can recollect.

1318. From Monaghan, I suppose, there would be likely to be some agrarian cases?
There have been some tried in Antrim.

1319 Do you know what the result was?
I think there were fair verdicts returned.

1320. There has never been any complaint on the part of anybody of their being tried there?
No; there was not long ago a case of a murder in the county of Monaghan, but it was not of an agrarian character. There had been a disagreement in the county of Armagh, where the case was tried, and also a disagreement in Antrim. It was a case of a family dispute between two brothers.

1321. Lord *Penzance.*] You have spoken of the carelessness with which the lists have been made out, dead men's names and names of men who have removed being left on; would it not be desirable that the collector, or whoever makes out the list, should be responsible in the shape of a small fine or a deduction from the money that is paid him, for every mistake that he made?
I think if there were a deduction made from the amount paid him, that would be a very effective thing. There is a fine contemplated by the Act, but I believe that that is only for a wilful mistake. Might I take the liberty of mentioning one suggestion with reference to the hardship of jurors coming from a considerable distance in the country, and being detained a very long time, especially the small farming class. They frequently make complaints and suggestions that their expenses should be paid, so far as relates to their coming to town and leaving town, and also to some extent while they are in the town. I would venture to suggest that, if it could be done by some very strict scale, it might create a greater willingness to serve. At some periods of the year at the time of harvest, and so on, the jurors feel it more than at others.

1322. *Chairman.*] Would you state to the Committee the proportion of town jurors who usually serve upon the common juries?
The proportion of town jurors is about two-thirds on the panel.

1323. And what is the proportion on the special juries?
It is about five-sixths.

The Witness is directed to withdraw.

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THE RIGHT HONOURABLE MR. JUSTICE BARRY, is called; and Examined, as follows:

1324. *Chairman.*] YOU are, I believe, a Justice of the Queen's Bench in Ireland?
I am the Junior Justice of the Queen's Bench.

1325. And you have had a long experience at the Irish Bar?
Very considerable indeed.

1326. Therefore, we may take it that you have had considerable opportunities of watching the operation of the Irish Jury Laws?
Certainly.

1327. Considerable changes were made in the law in the years 1871 and 1876. I suppose we may take it that the two main objects of those changes were, first, to put an end to the old system under which the sheriff selected the jurors, and, secondly, the substitution of a rating qualification for the old freehold and leasehold qualification, which experience had shown to be more or less obsolete?
And thirdly, perhaps, also to extend the area from which the jurors were selected, and therefore to associate a greater number of persons in the administration of justice; and I may say that, as regards those three objects, I entirely approve of the principle of those measures. At the same time, possibly, if the thing were *res nova*, the same objects might be effected in a less violent manner. An absolute power of selection in any individual was, theoretically, objectionable. It may have worked and did work very well in many districts, in fact, without objection; but at the same time it was theoretically objectionable; and when any system that is theoretically objectionable is once removed by the Legislature, it never can be restored; therefore, I take it for granted, in all I say, that there is no idea on the part of any person of suggesting any recurrence to the old system.

1328. Should you go so far as to say that those remarks applied even to that sort of indirect selection which was advocated just now by the witness whom you heard examined?
Certainly.

1329. Whether it was selection by the sheriff, or a power of rejection?
Or rejection from the panel. I am rather inclined to think (though I am not prepared to give any definite opinion upon it, because I look upon the matter as past discussion) that a perfect system of securing impartiality might have been adopted, whilst reserving to the sheriff, or to some other tribunal, I do not care what, a limited power of exclusion. I do not think that sufficient stress was laid at the time upon the tendency of calling the jurors by ballot to prevent the possibility of packing. I have had but very little experience indeed of jury packing; I never saw in my lifetime but two jury panels that I believe were packed: one was in a civil case, when I was rather junior at the Bar, and it was undoubtedly packed, I thought. The other case was undoubtedly packed against the Crown, for the purpose of effecting the escape (which it did) of a very bad offender. I believe the way in which packing was said to be done was this: the jurors who were desired to act in the case were put at the head of the panel; the panel at the time was called over in the order in which it was arranged by the sheriff; the prisoner has 20 peremptory challenges; 60 jurors of the desired class are put at the head of the panel; he can only challenge 20 of them, and there remain 40 for the Crown. Of course that would be entirely subverted by the ballot system. Then again, if you make it *primâ facie* the duty of the sheriff to select in the first instance according to the alphabetical order, he takes the first letter of the alphabet A; he is bound to take that man, and if he passes him over, everybody in examining the panel afterwards can see that that man has been passed over, and immediately the conduct of the sheriff can be challenged; whereas, on the other system, there was no mode of ascertaining whom he passed over, or whom he selected, except so far as the panel showed it in a vague and general way.

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way. However, all that is beyond discussion, because any recurrence to any system of control to be given to the sheriff would be regarded with great disapproval and jealousy.

1330. The whole idea of alphabetical rotation of service is opposed to anything like selection?

Absolutely, and that is the great merit of the system; but it is no doubt productive of some inconvenience.

1331. The inconvenience being that there is no sufficient opportunity of keeping out of the jury box persons who are undesirable jurymen?

Who are inadequate to fulfil the functions. When the matter was before Parliament it received very little attention, and it appeared as if the only discussion was as to whether the qualification ought to be 20 *l.* or 30 *l.* Dealing with it as a matter of qualification, it was overlooked that qualification, *primâ facie*, means, with reference to a juror, a man who is qualified to be put upon the panel; whereas, under this system, what was called a qualification, not only qualified him to be on the panel, but put him on.

1332. But should you go so far as to say that, if experience were to demonstrate that the present system gave us jurors upon whom we could not depend, it would be impossible, or undesirable, to take any steps in a backward direction?

I think it impossible with reference to securing public confidence.

1333. Would you kindly state to the Committee what class of person usually fills the jury box under the present system?

The operation of the Act and its results vary very much, according to my experience, in the different districts, or, as we would call them in technical phraseology, in different venues. Your Lordship did me the favour, I think, to quote, in the House of Lords, some observations that I made at the last assizes at Limerick. Those observations had no special regard to the present condition of the county at all. I made similar observations the year before, when there was little or no agitation in the country, and I have made similar observations in other districts. In some parts of the country I have found the system to work admirably well, in other places not so well, and in other places badly. For example, Dublin was one of the places in which the defective operation of the old jury system led largely, I believe, to the Bill of 1871. I have had a great deal of experience within the last couple of years of trial by jury at Dublin; perhaps I may say more, for some personal reasons, than any other judge; and, for a public reason also, viz., that there is a special jurisdiction attached to the Court of Queen's Bench, the trial of compensation cases where land is taken for public purposes; and those cases, which involve questions of great difficulty and nicety, are invariably tried by the junior judge of the Court of Queen's Bench. I have had common jurors and special jurors before me, and I am bound to say that nothing could be more satisfactory to my mind than the working of those juries. At first the common jurors were exceedingly awkward, and unacquainted with their duties; but the process of education has gone on amongst them most rapidly, and for the last 12 months I can only say that I am highly satisfied with the way in which the system has worked in Dublin. I think that it has worked very well in the city of Cork; I think it has worked very fairly indeed in Antrim. I do not quite concur with the last witness, Mr. Bottomley (a most able and efficient officer, I may take the liberty of saying), that the objection to the special juries in Antrim is altogether confined to the introduction, on the special jury panel, of persons who are not merchants, but who are shopkeepers or photographers, as he said. The difficulty, I think, arises more from the introduction in mercantile cases of jurors belonging to the farming class of the county. Of course the other cause may operate to some extent too, and I should be very sorry to put my opinion against his; but I have had considerable experience of the northern circuit; it is the heaviest but one in Ireland, and not being adverse to work, I generally go either the Munster circuit or the north-eastern circuit, which are the two heaviest; and, therefore, I see a good deal of business. As well as I recollect

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recollect I have not been for some time now on the Lienster circuit, but I thought that the Kilkenny county jurors did their business very well. At Clare at the last assizes, and at the previous assizes I was in the civil court, and I found that the Clare jurors did their business admirably. I am speaking generally of civil cases; I undertook some two or three very difficult cases; they were a class of case that would formerly have gone into the Court of Chancery, for taking an account, and I probably might have sent them back to the Court of Chancery to take the account; but in mercy to the people I did not do so; but I took them myself with the jury, and remained a couple of days trying them; and I was struck with the amazing intelligence of the jury, and with the accuracy of their findings. In the county of Cork I think there is a decided improvement under the amending Acts of 1876. But the place where I regret to say (being from that district myself) I see the least improvement is Limerick. Not that I mean to say that all the jurors there are defective in intelligence, or inadequate to discharge their duties; but, owing to some cause or another, there are always on the panel in Limerick, and, generally speaking, in the jury box, some men who are obviously unfit to discharge the duties of jurors. From the questions that they ask, from their demeanour, from the obvious impossibility of getting them to understand the questions to be tried, and from their utter incapability to draw inferences from circumstances, it is quite plain to any man, that they are unfit to discharge the duties of jurors. I am far from attributing to them generally any want of desire to do their duty; but, as a matter of fact, in civil cases as well as in criminal cases, the common jury panel in the county of Limerick is unsatisfactory. In one civil case not long since, I took a great deal of pains indeed and wrote out the questions; the case involved no point of mercantile law, or any complicated question; I explained the questions again and again, and they came back and asked me questions; and, finally, the counsel on both sides agreed that the task was hopeless, and they called upon me to discharge the jury as being unable to understand the issues. Then in criminal cases, it is commonly talked of as sympathy with crime; I do not think that it is all sympathy with crime; I think that great allowances ought to be made for men of a particular class who are called upon to sit in judgment upon their own personal friends, or upon friends of their friends. Many of those jurors are not of that class in whom a high sense of duty would overcome feelings of that kind. Possibly even if we went to the very highest class, and they were asked to adjudicate upon their own fellows, there might be some difficulty at times; but, of course, in those cases that high sense of duty which education and position give a man, would lead him to overcome those feelings. But you cannot expect that from the humbler people. Then we have people in Cork and Limerick, entreating, begging, imploring to be let off; in fact, one of the most distressing duties of a judge is to deal with the applications of persons coming forward and asking to be let go home, saying that they cannot afford to remain, that they have some little agricultural or other operation going on, and that they cannot be away, and so on. At the same time it is very difficult to see what remedy is to be applied.

1334. But if you have, in the jury box, persons of the class that you describe, and who are devoid of that sense of duty which is desirable in jurymen, I suppose we may take it that, when those persons are placed in the position of trying their own friends, it is extremely improbable that they will abide by their oaths, or act independently?

In some cases that is so, certainly, especially when we recollect that in our system of requiring unanimity in the jury, one dissentient makes the trial abortive.

1335. You referred to a passage which I ventured to quote from some recent observations of yours at Limerick; part of that passage runs as follows, as reported in the newspapers: "It is now plain that what has been stated all over Ireland is perfectly true, that trial by jury has become a farce in the county of Limerick, and a mockery, and I, as a Limerick man, say with pain, regret, and humiliation, that the parties who come into the jury box in Limerick are perfectly incapable of understanding evidence or determined, while understanding it,

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it, to violate their oaths and not to act upon them." That observation points not only to a want of intelligence, but to a distinct sympathy on the part of the jury with the criminal, and a determination not to abide by their oaths and not to do their duty?

Before I answer that question, I may observe that your Lordship has perfectly correctly read the report, but it is not exactly accurate, though it is substantially so. It makes it appear as if the observations were made more generally than merely in application to the county of Limerick; and it also makes me observe upon the jurors generally. What I said was that it was commonly stated over Ireland, having been a common topic of observation among the judges going to the various assize towns, that in Limerick there is a great deal of burlesque in the proceedings, I said that persons coming (I did not say the persons who came) into the jury box may be determined not to act upon the evidence; but the great objection that I pointed at in Limerick, was want of intelligence. I do not mean to say that other disturbing elements will not arise, and the observation applies to the whole working of the system in Limerick, from 1873 down to the present time, and has no reference whatever to the present disturbed condition of the country.

1336. A witness who was examined here the other day expressed his belief that the jury very often failed to find a proper verdict, because they conscientiously believed that there was a sort of unwritten law of justice and equity, which they interpreted to themselves, and which in their eyes was of higher importance than the written law of the land to which they were called upon to give effect; is that your impression?

I cannot say that I have had, in my own experience (and I am very anxious to confine myself merely to my own experience), any case which would establish that proposition. Now I was at the last winter assizes at Waterford, and the panel was a very short one; it was a city panel, and there was a good deal of excitement, and there was said to be a good deal of intimidation; but at the same time, on the whole, I thought the jurors did their duty with very considerable firmness, and I scarcely recollect a case in which there was an acquittal where an ordinary jury, a jury even under the old system, might not have had a doubt. There is one defect which I observe amongst the new class of jurors, and it is this: if there is an *alibi* of any plausibility whatever, a great number of them have no power of discriminating between the true evidence and the false evidence; they have no power, as I observed before, of drawing inferences from surrounding circumstances; in fact, of appreciating the circumstantial evidence of the case. No matter how clear, or how supported by corroborative testimony may be the evidence on the part of the prosecution, if one or two apparently respectable men come up and swear pointblank that the prisoner was not there at all, which is called an *alibi*, the jurors immediately doubt. There was a disagreement of that kind at the winter assizes, but it is a case which I do not wish to go into the details of, because it has not been disposed of. Certainly in Waterford I was compelled to postpone a remarkable trial, which is at present going on in Dublin, owing to uncontradicted statements of the officials, that from the state of the panel, and from the state of excitement in the district, jurors could not be got to do their duty, whether from fear or favour was immaterial.

1337. Was not that the Boyd case, in which an affidavit was made that a large proportion of the jurors on the panel were enrolled members of the Land League?

I think the statement was that they attended the Land League meetings, and I think the substance of the affidavit was that they attended the Land League meetings rather under coercion.

1338. In the Limerick district I suppose we may take it that most of the farming class are active members of the Land League Association?

I could give no better opinion upon that point than your Lordship, or anybody else. We hear that the thing is widely spread amongst the farmers, but I have no special knowledge on the subject.

1339. But there are fair grounds for believing it?

I am sure there are.

 1340. Therefore,

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1340. Therefore, a jury which was largely composed of members of the farming class, would scarcely be very likely to show much independence of spirit if they were trying a case which arose directly, or indirectly, out of land matters?
I must give an answer to that with some reservation. I happened to try one or two cases last assizes in Kerry, the civil business being disposed of, and thought the jurors there did their business very fairly. I do not know whether Land League considerations entered into it, or not. There was one remarkable conviction which I never expected. The evidence was clear, but I thought from the disturbed condition of the district, they would disagree; but they did not. In Waterford the jurors were city jurors; but I do not place much account upon that, because the relations between the rural districts of Waterford and Waterford town itself are so close, that I do not think it makes any practical difference whether they are taken from the one class or the other. I thought they did their business very well indeed.

1341. Has it come to your knowledge that there have been cases in which members of the jury panel have been canvassed?
I have heard of it; but I would have no opportunity of ascertaining the fact. I have no doubt that it is done, and I have no doubt that it was done under the old system.

1342. Are they ever threatened?
I have no recollection of hearing of a juror being threatened. It was sworn in the Boyd case that the jurors were apprehensive of consequences to themselves in their trade, and so forth; but I have no recollection of any case being brought before me where it was asserted there were any threats to jurors.

1343. But that would be a very effectual form of intimidation, would it not?
No doubt.

1344. Lord *Ardilaun*.] Were there not a good many convictions obtained at the last assizes by the Crown, directing prisoners who pleaded guilty to stand down?
I do not treat those as convictions where the prisoners pleaded guilty, and they were allowed to stand out on their recognizance.

1345. This was not one of those cases?
I use the word conviction in the sense of a verdict of the jury. In a great number of those cases where people had taken forcible possession, they pleaded guilty, and I suspended judgment. The people gave up possession during the assizes, and the landlord, or his agent, or bailiff, came in and said: "We have got possession"; and then the Crown said: "We will let them stand out on their own recognizances," which I thought an admirable termination of the affair.

1346. *Chairman*.] Then may we take it that your evidence comes to this: that there is considerable variety in the conduct of the juries in the different venues; that in some parts of the country they are improving by practice, but that in others, you find upon the jury persons who are very deficient in intelligence?
I think so.

1347. And that there is a considerable readiness on the part of the lower class of jurors, generally, to avail themselves of any loophole in the direction of enabling them to find an excuse for acquitting a prisoner?
Yes, certainly. With regard to the observations that your Lordship quoted and just now read to me, I made a similar observation in the spring of 1880, in Armagh; and, certainly, no judge ever undertook a more hopeless task than I had to go through, in endeavouring to get justice administered with any degree of certainty. I am not speaking now of pure party cases, but somehow or other in Armagh they always manage to make out every case to be a party case; that is to say, they ascertain whether the man is a Roman Catholic, or a Protestant, or, as they call him, an Orangeman. If he be a Protestant, all the Protestants on the jury will be for an acquittal and *vice versâ*, and the others, I do not say will be for a conviction if the case is not clear, for they never do that on either side; I do not believe that in the most violent party cases they

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they ever convict a man unjustly; but all the men on the side of the prisoner will be for acquitting him, and therefore, of course, no matter how clear the case is, you get no conviction. Again there, I thought too, as I do in other places, that there was a want of power in many of the jurors summoned under this system of drawing inferences from the circumstances of a case; and if there is an *alibi* it is conclusive.

1348. And you would say, too, that the absence of the power of discriminating and that readiness to look out for loopholes is most conspicuous when the jury happen to be trying a case in which the persons on their trial are connected with themselves, or friends of their own?

Certainly. In all the observations that I make it is to be remembered always that one or two men will cause a disagreement. It is more generally in disagreements that failure takes place than in bad verdicts.

1349. Bearing in mind the great difference which seems to exist in different parts of Ireland in the conduct of the juries, should you say that it was desirable to have recourse, more frequently than now, to a change of venue?

That question of change of venue is a very delicate one to ask me about, because the jurisdiction of changing the venue is vested in my court, and it is a subject which I would rather not discuss. For example, the present Boyd case is being tried in Dublin by an order of our court to which I was a party.

1349*. Lord *Penzance.*] Is there an absolute power in the Queen's Bench to change the venue in all criminal cases?

Yes, as in England, by *certiorari.*

1350. *Lord President.*] Is the change of venue always confined to bringing a case to Dublin, or may the case be sent to Belfast or other towns?

We may send it to any part of Ireland, but the process is a very cumbrous one; and although it is a discretionary jurisdiction in one sense, it is a discretion exercised according to fixed rules and precedents.

1350*. The venue is almost invariably changed to Dublin, is it not?

Yes; I think that is on account of the extent of the city of Dublin, and the number of jurors on the jury books. As I am on the question of Dublin, I may say that at these last sittings, within the last 10 days, I tried two or three what are called agrarian cases on the civil side, that is to say, cases between landlord and tenant, cases arising out of these assertions that there were promises of new arrangements made after an eviction, and so on. I am not very well acquainted with the *personnel* of all the city jurors of Dublin, but I thought that there were, on that jury, some very advanced politicians, to use the ordinary phrase, men who would be very likely to take a view against the landlord; and, unhesitatingly, in each case, they found, as they ought to have done, for the landlord, without the slightest difficulty of any kind whatever.

1351. Lord *Inchiquin.*] Were those special jurors?

They were.

1352. *Chairman.*] You reminded me just now that one or two perverse jurors could always obtain a disagreement by standing out against the rest. Have you considered at all the advisability of making any change in the direction of accepting a verdict of the majority of the jury?

Without saying that at any one period of my life I ever considered the question out, I have a decided prejudice against it. I am perhaps rather old-fashioned in my notions. I assume that we are speaking of criminal cases, because it is more debateable in civil cases.

1353. Would one of the effects of accepting the verdict of the majority be this, that with a jury where there happened to be two or three independent jurors, they would find themselves at once left in a minority, and without any chance of influencing their colleagues?

That might be so; but in fact, independently of other objections, I will tell you an anecdote which may convey what is passing through my mind. Lord

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Chief Justice Monahan was trying a case upon one occasion, and he charged very strongly for one side. After some time, the jury came back and said that they disagreed, and stated that there were 11 to one. The Chief Justice immediately assumed that the 11 took his view of the case; and he sent them back again and again, and he remonstrated, and said what a monstrous thing it was for one man to be holding out against 11 sensible men, and that there ought to be give-and-take, and all the rest of it, and he rather abused this man. At last this man called out: "My Lord, I am the only man that is for your Lordship."

1354. That would be rather an illustration of what I was endeavouring to suggest; that man would have been at once left out in the cold?

Yes.

1355. Some of the witnesses who have been examined here have made a suggestion of this kind: that where a jury has disagreed, and there is reason to believe that that disagreement has been occasioned by perversity on the part of some member of the jury, the case should then be sent for trial before, say three judges; is that a kind of proposal that you would advocate?

It is a proposal so startling and so novel, that I am not prepared to give any opinion upon it.

1356. Earl of *Derby.*] I think I gathered from your evidence that, upon the whole, you do not consider that there has been an habitual failure of justice in the south of Ireland, even in agrarian cases?

No, not habitual. We have had, on the recent assizes, convictions in a great many cases of the kind. To say that everything is working satisfactorily would be going further than I should be prepared to go; but I am informed, by the judges on other circuits also, that in some parts of Connaught they have got on very well indeed. At the same time, that is, I am informed very much due to a process to which I have always had a very great objection. From the earliest times the Crown has had the right to, what we call in Ireland, call directing a juror to stand by. I believe in England the technical word that is used is "challenge," which is an inaccurate word, for the juror is only put temporarily aside until it be ascertained whether they can get a sufficient jury without him. I think that that is a power which ought to be maintained; in fact I never heard it seriously suggested that it should be given up, either in England or in Ireland. But I have an objection to its being exercised in the manner in which I have seen it exercised in recent times in Ireland; I do not like it. I am not able to offer any remedy for it, but I own I have a sort of feeling of something like indignation when I see 40 or 50 men brought in, perhaps from enormous distances, into a county town, and then, when they are called, without being told why or wherefor ordered to stand by; in fact they sometimes do not know what is going on; and sometimes they remain there still and try to get the book to be sworn, although they have been told to stand by.

1357. Do you object to that upon the ground that it is an undeserved slur upon them?

In a great degree upon that ground; I have not had much opportunity of studying the Reports of the former Committees, but I have observed that some of the witnesses said that the jurymen do not care about it. I am not so sure of that. Some men may not care about it, and those men, I think, ought to be put off the jury; but I think if a man is prepared to do his duty, he cannot but feel that it is a slur upon him to be desired peremptorily to stand by. However, I am not prepared to offer any remedy for it.

1358. I presume that the reason for desiring a juror to stand by in such a case is that there is what appears to the prosecuting counsel reasonable ground to suppose that the man is prejudiced, and would not be prepared to give an honest verdict according to the evidence?

I assume that that is the foundation for it.

1359. That opinion existing on the part of the prosecution, do you think that they would be doing their duty if they did not direct the juror to stand by?

Certainly; they would be bound to put him aside.

1360. Therefore,

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1360. Therefore, although you lament the state of things as unsatisfactory, you are not prepared to condemn it?

No; I look upon it as the bounden duty of the Crown solicitor to direct to stand aside any man who he is informed will not discharge his duty fairly between Crown and subject.

1361. And you do not think that that right could be dispensed with?

Certainly not; I was only expressing my regret that the state of things exists which, in order to bring about the effects that I spoke of, necessitated the exercise of that power to such an extent as it has been exercised.

1362. Lord *Inchiquin.*] But you think that cause should be shown why the man is told to stand aside?

I do not think it would be possible in court; I think that is the very essence of the power. The Crown officer calls out "stand by," and the man stands by, subject to this: that afterwards, if there is an insufficiency of jurors, this man will be called over again, and then the Crown is bound to give reasons.

1363. Earl of *Derby.*] Do you think that, on the other hand, the right of peremptory challenge on the part of the prisoner is liable to abuse?

I heard your Lordship ask that question of Mr. Bottomley, and he said it was in this way: that they challenge the most intelligent men; and, of course, they do. You cannot well interfere with the privileges of the prisoner. The exercise of the challenge by the Crown is upon a different footing. Our law recognises certain rights for a prisoner, and I am not prepared to abridge those rights.

1364. You are not prepared to abridge the right of peremptory challenge to the extent to which it is carried, namely, to 20 names?

I rather think in the Criminal Code Commission we let it stand as it was in serious cases. I know we discussed it very fully.

1365. Then in any case where the majority of the jury may be of the prisoner's own class, and presumably likely to sympathise with him, you see no objection to every juror of a different class being struck out by the exercise of that right of challenge by the prisoner?

No. Of course if you could prevent the intelligence of a jury being sifted out in that way it would be so much the better; but I do not see my way to doing it, without depriving the prisoner of a privilege, an operation which I think would be regarded with considerable disfavour.

1366. Do you think that there is any reason for the exercise of that privilege further than this; that it is desirable that the prisoner should have the power of removing from the jury any persons whom he may reasonably suspect of being hostile to him?

That no doubt was the original idea; but still I think you would find it very difficult to in any way abridge the prisoner's power of challenge, especially at present when the power of the Crown to direct jurors to stand by is so largely exercised.

1367. You say that it would be very difficult to abridge the prisoner's right of challenge; do you mean that you think it would be unjust, or merely that there would be a strong popular feeling against it?

I own I think that whilst the Crown does so largely avail itself of its power of directing jurors to stand by, it would be unjust to the prisoner to deprive him of his present challenge.

1368. Lord *Tyrone.*] I understand you say that your remarks, quoted by Lord Lansdowne, were not owing to the present state of the country, but would apply to the jury system before the present agitation began?

Certainly; I mean in the particular district to which I referred.

1369. Then do you consider that trial by jury was a farce before you said so at Limerick?

What I quoted was a saying that had become very general, that in Limerick there were so many men on the jury that were unfit to serve, that it became a mere farce in that particular district, that is since 1871. It had reference to

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the general working of the system from 1871 down to the time I spoke last spring; and it had no special reference to the existing agitation, for I made similar observations on previous occasions, almost in the identical words, having no reference whatever to the agitation which at that time did not exist.

1370. Then it was considered by the judges that trial by jury was a farce? In that district.

1371. But not generally?
No; my observations had reference only to Limerick, and you will find that it is accompanied by the observation that I regretted to say it, being a Limerick man myself.

1372. You spoke of a want of intelligence on the part of the jurors in Limerick; would you consider that want of intelligence would make a man violate an oath, or would not the word "violate" mean that it was done intentionally?
I think I said they had either not enough intelligence to understand the evidence, or, not understanding it, were determined not to act upon it. The latter I would call, so to say, corruption; the first I would call want of intelligence.

1373. But I refer to the word "violate," which I think was quoted; and I want to know whether you considered that a man who violated an oath had not done so intentionally?
Certainly.

1374. He would not do so for want of intelligence?
Certainly. The observation that I made says either of two things occurs: either the men who have disagreed have come into the box unable to understand the evidence given before them, or they have come into the box determined that they would not act upon it.

1375. Do you consider that there is any likelihood of getting a verdict in a clear case of agrarian crime in the worst parts of Ireland at the present time, under the present system?
I am not prepared to give a general answer; but of course it would be impossible for any person not to perceive that on any occasion, either in England or Ireland, if the public mind on any particular subject is very much excited and disturbed, and if the persons who are to act as jurors are persons who are intimately connected with that disturbance, of course there must be great apprehension that satisfactory verdicts would not be obtained; but I think that on occasions of great passion, great public excitement, and agitation, any system of jury that you can devise will break down. I may observe, that in that case, when I made these observations in Limerick, one very apparently respectable and intelligent juror (I think he was the foreman, but I am not sure, nor is it material) said: "Some of us understand, my Lord, well enough, and some do not."

1376. Lord *Emly*.] You had experience, I think, on the Munster circuit for some 23 or 24 years before this new system came into operation?
I joined the circuit in 1848.

1377. What was your opinion of the old juries in the Munster circuit; take first the Record juries?
They were very good indeed.

1378. That would apply to Limerick, Kerry, and Cork?
Certainly.

1379. You, therefore, would not agree at all with any assertion made that sectarian or political motives entered into the conclusions at which they arrived?
I was on the circuit from 1848 pretty regularly, except when I happened to be in Parliament, until I was made Solicitor General in December 1868; and I never heard the subject alluded to of sectarian or party arrangement of the panel by the sheriff for any particular purpose. Of course, on one or two occasions there were political trials, and there were the usual assertions made of partiality; but I rather think that those objections, in the main, were addressed to the "standing aside" of men of a particular way of thinking by the Crown in open

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open court, and not at all to the arraying of the panel by the sheriff. There was, I think, in one of the Fenian trials in Cork a challenge to the array; it was tried and the tryers found against the challenge; but, in the ordinary administration of the law, civil or criminal, I never, certainly up to the time I left the circuit, heard any objection made to the old system on the ground of partiality on the part of the sheriff.

1380. And there was no undue disagreement of juries where the evidence was clear?

Not that I recollect; of course there were disagreements.

1381. With regard to the want of intelligence on the part of the jury of the county of Limerick, is it not a fact, particularly in the New Pallas district (cases coming from which I think you have very often tried), that the disagreement of juries, or the acquittal in cases where the case is clear, arises from something very different from want of intelligence?

In that class of case it perhaps arises more from the fact that the jurors are men very much of the same class as the prisoners, who, though they may be guilty of these assaults, are not the reverse of respectable in any other phase of life. In that way there may be some feeling of what you would call sympathy or friendliness for the prisoner; but I think it very much arises, in these cases, also from the fact that in almost every case there is an *alibi* proved; and, as I have already stated, the great danger with the present jury system is that the men are incapable of discriminating between truth and falsehood.

1382. I suppose you would hardly think that in other matters the people of the county of Limerick were lower in intelligence than those of other parts of Ireland?

You put a question rather generally to me. You talk to me of the want of intelligence in the jury. My observations entirely apply to the existence of the want of intelligence amongst some of the jurors, a sufficient number, in the majority of cases, to disturb the verdict and produce a disagreement.

1383. But does the soil in the county of Limerick produce that particular class of disagreeing juror more than in other cases?

I am not bound to go into the metaphysics of the question, and to account for the fact; but it is a fact to which every judge in Ireland will bear testimony, and I think it may be accounted for in this way: the land in the county of Limerick, as you know, is very good land, and therefore it is very highly rated, and men who are educationally of a very inferior class, have the necessary qualification of a 40 *l.* rated farm. That is the only way in which I can account for it; it may not be satisfactory.

1384. I think you are a member of the Board of National Education, are you not?

I am not.

1385. Then, perhaps you are not able to answer this question: do you know how the county of Limerick stands with regard to education?

I happen to have it from a very good authority, who is a colleague of mine, and a member of the National Board, that the progress amongst the younger people of the county of Limerick under the national system has been most remarkable; that they are displaying the most remarkable intelligence, and making the greatest progress.

1386. And Limerick stands among the first counties of Ireland as regards education?

So I understood from him.

1387. Lord *Penzance.*] With reference to this system (which, of course, obtains in England as well) of the Crown ordering a man to stand by, you say that that is largely used?

So I understand, and I have seen it exercised largely at the last winter assizes.

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1388. And I think you said, that the result was to obtain better verdicts?
That applied to the west of Ireland. I had in my mind, at that time, Waterford; it was not so largely exercised in Waterford.

1389. Then enlarging the area of the question, let us go to the counties where it has been largely used, and where the effects have been satisfactory; you object not to the result, but to the process?
I object to the process; at least, I feel it unpleasant. Other people do not object, but I do not like it. It is perhaps mere sensitiveness on my part.

1390. If that practice had not obtained, do you think the verdicts in those cases would have been equally satisfactory?
I am satisfied that they would not.

1391. Then it comes to this: that in point of fact, unless such men are removed, either by that process or by some other process, a number of men would, under the present jury system, get into the jury-box who are not to be trusted?
Certainly, in the opinion of the local officials.

1392. And that is an opinion which obtains generally in those parts of Ireland to which you have alluded?
I assume so.

1393. Then the Crown has a certain number of peremptory challenges besides the stand-by, has it not?
No, the Crown has no peremptory challenges since the early Act of Edward I., which was afterwards re-enacted in the reign of George IV.

1394. And you are not prepared, with the view of improving the jury, by retaining upon it the intellectual element, to curtail the number of peremptory challenges which the prisoner has?
If that were done under different circumstances; if it were done at a time when it was not found necessary to exercise the right of challenge on the part of the Crown so largely as it is at present, I am not at all prepared to say that the lessening of the number from 20 say to 10, or any number, would not be an advantage.

1395. Taking a given panel, I presume that the really intelligent element would be a small minority of the whole panel?
Yes.

1396. If the result of the exercise of this peremptory challenge is to reduce even that small proportion, that surely is a great evil?
Yes, certainly.

1397. Would it not be perfectly consistent with justice, and with giving the prisoner a fair trial, that he should not be at liberty to remove all the intelligent men from the jury?
I think that, in considering the matter, you should take care that you do not give some foundation for an outcry against a system which would induce the people not to have confidence in it, or to profess not to have confidence in it; and I think that a time when the Crown themselves feel it necessary to exercise the power of ordering to stand by so largely as they do at present, would not be the time to limit the prisoner's power of challenge.

1398. But supposing that things were not going in that way, looking at it as an abstract question, it might be an improvement, might it not?
As an abstract question, I am not at all prepared to say that a limitation of the power of challenge, say to 10, or sometimes, if you had more than one prisoner, distributing it so as not to double it in the case of two, or treble it in the case of three, might not be introduced probably with advantage. I forget what conclusion we arrived at on the Criminal Code Commission.

1399. But, of course, that Criminal Code Commission had no reference specially to the population of Ireland?
None whatever; it was to apply to England and Ireland alike.

1400. The

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1400. The main fault which I think you will find with the juries is, that in some parts of the country the jury under Lord O'Hagan's Act are not intelligent enough?

My opinion is that some of the jurors are deficient in educational and intellectual qualities; that is the main permanent difficulty.

1401. To grapple with that would you suggest a higher qualification?

Yes, I was about to say that. I am not acquainted with the statistics; but I certainly would raise the qualification as high as was consistent with the obtaining of a reasonably sufficient number of jurors. I think too much stress has been laid, on former occasions, on the necessity of not having a man called for nearly three years; another suggestion was two years, and another was a year-and-a-half. I think that the English Jury Act of 1870 only provides that a man is not to be called upon more than once a year. I see no reason why a man might not be called upon, if necessary, twice a year.

1402. You would start by saying that a man might be called upon to serve twice in the year, and then you would go on the list, and you would make the qualification as high as possible, so that, with that reservation, you would get a sufficient number?

Yes. Of course I do not mean to say that a man who is rated at 50 *l.* a year will be necessarily a better man than a man who is rated at 40 *l.* a year, but still you must look for some advantage in raising the qualification, otherwise you might as well have no qualification at all. Then, in the case, for example, of Limerick, the city common jurors are extremely intelligent men, and I have been informed by the judge who presided at the Limerick winter assizes, that they displayed remarkable intelligence, and did their duty with great firmness and propriety. I would amalgamate those men, not on the panel, but on the juries with the county men, at all events in criminal cases. One witness, on a former Committee, I think, suggested that being done, but he suggested its being done in this way: that you should make one common panel for the county and the city. I would keep the panels distinct, for this reason, because I think that in a civil case the suitor should not be deprived of his right of laying his venue in a mercantile community, and having it tried by skilled persons. I would keep the city panel for cases of that kind, and I would keep the common county panel separate altogether. What was proposed was objected to, because it would have the effect of entirely destroying the existence of any city jury as a distinct tribunal. But it was overlooked that the ballot has now introduced an entirely new system, and the names of the jurors are placed upon cards and thrown into a box. When any case is called on the officer of the court would take the city cards, and the county cards, and throw them into the box together.

1403. Therefore you would keep the two panels distinct, but in balloting for the jury you would mix them up?

Yes. Then there was a suggestion made by the Committee of 1873. that an old franchise, which was taken for special jurors from the Act of Will. 4, viz., sons of Peers, sons of Knights, sons of grand jurors, sons of magistrates, and so forth, being residents, but not being householders, should be put on the panel, and I cannot understand why that suggestion was not adopted. I think it was not adopted simply to save somebody or other the trouble of furnishing a list of them. I can give no other reason for it.

1404. It would be rather a fugitive list, would it not?

If a man was resident when he was put upon the list, and be afterwards goes away, what harm does that do? For example, you see a gentleman of position; he has two or three sons, graduates of the universities, and so forth, men of high education, living with him; they are not rated of course for 6 *d.*, but why they are excluded from the jury panel I cannot understand.

1405. But they are excluded from the Parliamentary vote, are they not?

I do not think that there is any analogy between the Parliamentary vote and the position of jurors. You must have a property qualification for a voter, but you require other qualifications for a juror.

 1406. Everything

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1406. Everything in this country and in Ireland goes by householding?
No doubt.

1407. However, you think that would be an improvement?
Certainly; and I can well understand the advantage of having a man of that class on a jury, who would probably be a kindly, popular man, and who would talk to the men in the box, and they would listen to him. Then there are some peculiar qualifications for jurors, I think, in a Bill which was introduced by Sir John Coleridge in 1873. I have not a copy of the Bill, but I think that would be well worth the attention of the Committee.

1408. These suggestions are suggestions for enlarging the jury list by the addition of men of intellect and education?
Yes.

1409. Lord *Tyrone.*] I understand you to say that you would raise the qualification of a juror; would you vary the qualification in different counties, because, as I understand it, a qualification which admitted a juror in a rich county, would exclude that juror altogether in a poor one.
I am very much obliged to you for asking me that question, because I omitted to observe that I think it is a mistake to lay down a universal rule. I quite agree that there ought to be some consideration for the different results produced by the different qualifications.

1410. You would vary the qualifications according to the poorness or richness of the county?
I would; but at the same time there appears to have been an idea in the mind of the framer of the original Act, I think it was Mr. Molloy, that you were to go downwards as far as would be necessary to produce such a number of jurors as would prevent the necessity of a man serving more than once in two years. I would not do that. If it were necessary for him to serve once every year, I would make him do it.

1411. Lord *Inchiquin.*] I understood you to say that you would raise the qualification as high in every particular county as would enable a sufficient number of jurymen to be put upon the panel, so that they should only be called to serve twice in the year?
Twice in the year would be rather severe, I think; but I think that they ought to be very well content to serve once a year, if necessary.

1412. Lord *Ardilaun.*] Do you approve of uniting the county and city panels of Dublin?
I have been explaining my views upon that point.

1413. And you would take the same view with regard to Dublin as you would with regard to other parts of Ireland?
I would.

1414. Keeping the panels separate?
Keeping the panels separate, but mixing the names up when the jury came to be called.

1415. Would you do that in every case?
I do not see any reason why you should make any difference. The city jurors are sometimes sitting there listening to the county cases going on.

1416. I do not quite understand why you would keep the lists separate?
In order to preserve the right of the suitors in civil cases to have their cases tried by a city jury.

1417. Then it would be a matter of selection; they would choose which jury they would take?
Not in criminal cases.

1418. But in civil cases?
In civil cases, if the venue is laid in the city, it should be tried by a city jury; I meant to preserve that right. If you amalgamate the two panels, in the sense in which the phrase has been commonly used, you destroy the existence of

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of the city panel; and therefore, if you wanted a first class mercantile jury in the city, if you amalgamated the panels one of the special jurors called to try that case might be a grazing farmer or something of that kind, who was utterly unfit for it.

1419. Lord *Monck.*] You gave a good deal of evidence with regard to the Munster circuit, and I understood you to say that, up to the passing of Lord O'Hagan's Act, the jurors on the Munster circuit, both criminal and civil, were very good?

I never heard an objection to them; we are rather proud of our jurors, in fact.

1420. Since the passing of Lord O'Hagan's Act, I understand that you have acted as judge in the county of Clare, and that you found the jurors good on the whole?

Yes.

1421. Are they as good, generally speaking, as they were before the passing of the Act; are you as satisfied with them?

It is a long time to take one's memory back. I was made a judge just when Lord Hagan's Act was coming into force, so that I only dealt with them previously as an advocate.

1422. But what is your general impression as to the effect of the change?

They were remarkably good jurors, both common and special; but the old system had this defect, that of course you always saw the same men coming there. Since then I heard that they were very bad, at first in 1873. I went there first under the new system in 1874, and I confess that I was struck with the great alteration for the worse; but recently, in the years 1878, 1879, 1880, and 1881, I thought there was a marked improvement in Clare.

1423. Then, in the county of Clare, we may take it that there was a deterioration after the passing of Lord O'Hagan's Act, but that since then there has been a marked improvement?

I think so.

1424. With regard to the county of Cork, I think you said that the jurors were pretty good?

Yes.

1425. Does the same observation apply to the county of Cork as you have applied to the county of Clare, with reference to the improvement?

I think so.

1426. You did not say anything about the county of Kerry; what has been your observation with regard to that county?

At the last assizes, in the very few cases that I tried I thought they did their business very well, and under rather trying circumstances; that is to say, I thought they were cases where you might have a suspicion that there might be some little bias; but I do not think that there has been so much improvement in Kerry as in Clare.

1427. The general impression left on my mind by the whole of your evidence is, that Limerick is the only district that you can put your finger upon and say that a scandal in fact exists there?

I confess that I must look upon the condition of things in Limerick as being very unsatisfactory, for the reasons which I have already given; but it is to be understood that that does not apply to all the jurors on the jury book, or anything like it. You get as good jurors and as intelligent men in Limerick as you get anywhere.

1428. Your opinion distinctly was that in the majority of cases, where there was a failure of justice, it was attributable to want of intelligence rather than to malevolent feelings?

I confess that that is so, though of course there were cases in which you would expect from the class of persons on the jury that they would not go very much out of their way to find the prisoner in the dock guilty.

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1429. Lord *Inchiquin.*] In giving this opinion as to juries on the Munster circuit, you are speaking of the civil as well as of the criminal cases?
I speak of both, but in Clare I speak principally of civil cases.

1430. Have you had experience in Clare with reference to criminal cases?
Very little.

1431. There was one notorious case in Clare, which occurred very shortly after Lord O'Hagan's Act came in, in which a man had lost his thumb, do you remember that case?
Yes.

1432. Were you at those assizes?
I was not.

1433. In that case the failure of justice was very notorious, was it not?
Of course, I heard all about it from the presiding judge.

1434. It was not that there was any want of intelligence on the part of the jury in that case?
From the description which I got from the judge, or from the narrative given in the evidence before one of the Committees, I rather think it would be attributable to other reasons.

1435. But those other reasons are not altogether uncommon, I think, in Clare?
They are not; but I cannot separate the want of intelligence and education, and position, from what you call the other elements of sympathy, and so forth. If the juror is a man of intelligence, education, and position, though he may sympathise with the prisoner, and though he may be very anxious to let him off, if he can, still his sense of duty will overcome that tendency; whereas the juror of the lower class will not have that sense of duty. It is as old saying, "Noblesse oblige."

1436. You are sufficiently satisfied in fact with the common jury, to think that there is no necessity at the present time for any change in the Munster circuit, with the exception of Limerick?
I would raise the qualification in every county, where the raising of the qualification would give a sufficient number of jurors to do the work.

1437. But may I call your attention to another case which occurred at the last winter assizes at Cork; I am talking of the case of posting threatening notices?
I know the case very well.

1438. That was a case which I think was tried twice, if not three times?
It was tried before my Brother Fitzgerald at the winter assizes in Cork. The jury disagreed; it was sent back to its original venue, Clare, and it was tried before me at the last spring assizes, and the men were acquitted; and, in my humble judgment, under any system of a common jury that I ever saw in existence in this county, there might have been the same result.

1439. You do not blame the jury?
I do not indeed in that case. Of course, I am not saying that the verdict was a right one, but it was a verdict which you might have expected under any system that I ever saw in existence.

1440. *Chairman.*] On the ground that the evidence was insufficient?
The evidence became unsatisfactory. There was a witness in the case, who I think had taken to drink or something of that kind; and although I knowthat the judge who tried the case first, was strongly of opinion that there ought to have been a conviction, I could not say that that jury ought to have been perfectly satisfied with the evidence. Of course in a civil case you take a much stronger view, and the Court would judge for itself, but I would not say that the verdict of not guilty was unsatisfactory.

1441. Lord *Penzance.*] You would not have reported it as unsatisfactory?
No.

1442. Lord

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1442. Lord *Emlyn.*] Was the case very well got up?
It was very well got up. It was a second trial, and they knew it perfectly well. Some of the witnesses got in some way or other into disrepute, and the evidence was given in an unsatisfactory manner.

1443. Lord *Inchiquin.*] There is another case that I should like to ask you about, which occurred in Clare; it was a murder that occurred at Crusheen, and I think there were three trials in that case; it was principally on circumstantial evidence?
Yes, the man was tried twice, and then it was sent to the winter assizes in Cork in 1878, at the time of the great snow. I was the winter assize judge. It was postponed on the application of the prisoner, there being a curious proposition to me on the part of the Crown, to send the jury from Cork through the snow to Clare, about 16 miles from Ennis, in order to let them view the place. I said, "If the jury are willing to go, I agree"; but they did not seem to see it, and I did not force them.

1444. Was the case tried before you?
It did not come to trial; it was postponed.

1445. That was an abortive case, was it not?
Yes, it ended in the man being permitted to leave the country. So far as I could judge from the depositions, which is, of course, always an uncertain test, and assuming that the Crown proved no more than appeared in the depositions, I would have thought that there ought to have been an acquittal, and I would scarcely have allowed the case to go to the jury on the evidence that the depositions contained.

1446. Then you do not think that the jury were to blame in that case?
I think not.

1447. You think then, that if the qualification was raised, as you suggest, you would get a thoroughly satisfactory jury?
I do not say so at all; but it is the only suggestion that I can make.

1448. You are not in favour then of what was suggested by one witness, viz, that there should be a commission to try certain cases which the Attorney General might think it would not be satisfactory to put before a jury?
I am not prepared to give an opinion upon any remedies of that kind. I think that those questions belong to the region of politics, and not of judicial advice.

1449. Lord *Penzance.*] The proposal that was alluded to was, that it should be tried before two judges without a jury; would you approve of that?
I think that would be a very unfortunate suggestion indeed. I am of opinion, notwithstanding some things that you hear from time to time, that the Irish judiciary has eminently the confidence of the people. I generally go either north or south, but I go to every part of the country, and in the most prejudiced and sectarian districts. I am satisfied that such a thing never occurs to the mind of a man, that because I happen to be a Roman Catholic, and I have a Protestant prisoner before me, I will not give him a fair trial. I think that to do anything that would destroy that feeling of confidence would be a great misfortune, and a great disaster to the country; and I am satisfied that sending judges down to try men without a jury would destroy confidence, and I do not think that you could ever restore it again.

1450. Lord *Monck.*] If such a thing became absolutely necessary, you think that it would be better to disconnect the ordinary judiciary from any such proceedings?
Certainly; I do not think that the judiciary should be concerned with anything out of the region of constitutional law.

1451. You think that such a trial should take place, in fact, by judges appointed *ad hoc*?
I would rather not give any opinion on the subject. I would only say that to send down the judges, for the purpose of trying a question of fact

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out of the ordinary course of the constitution would be, in my opinion, a great mistake and a great disaster.

1452. Lord *Penzance.*] In 1825 or 1826 there was an Act passed to that effect, was there not?

I rather think there was, but I am not familiar with the proceedings, and I should be very sorry if that were drawn into a precedent. Times in Ireland have very much changed since that.

1453. Lord *Inchiquin.*] With regard to the land cases connected with agrarian matters tried on the Munster circuit, do you think that the juries have given satisfactory verdicts?

In litigation between landlord and tenant I cannot call to mind any case in which I was dissatisfied with the finding of the jury on the Munster circuit, and I have gone the circuit from 1874 to 1881.

1454. *The Lord President.*] You spoke of the satisfactory way in which juries performed their duties in Dublin; would you extend that to agrarian cases that might come up at the present time?

Certainly. I have had, I think, three cases before me within the last fortnight, and nothing could be more satisfactory than the mode in which they discharged their duty.

1455. Has that always been the case with Dublin juries?

Agrarian cases very seldom come before Dublin juries, I am speaking of civil cases.

1456. I alluded to criminal cases in which the venue had been changed to Dublin?

A change of venue in criminal cases very rarely occurs. I remember only one case, and in one part of my evidence I referred to that case, but I do not care to say any more about it. There was an acquittal in that case, but under, I think, very peculiar circumstances.

1457. But, in cases of violence which might be connected with Fenianism, have Dublin juries generally done their duty?

There have been what were said to be one or two very bad findings, but on other occasions they have done their duty.

1458. Those cases have been generally when there has been excitement in the country, or in the city?

I think so.

1459. You spoke about the north, and I think you said that the Armagh juries were nearly as unsatisfactory as the Limerick juries?

I think so, in crimes of violence in particular.

1460. Can you account for that in a somewhat similar way to the way in which you accounted for the deficiency of intelligence on the part of the Limerick juries?

I think it might be accounted for in somewhat the same way, with the additional element of sectarian disturbances in Armagh.

1461. But Armagh is not so rich a county in the agricultural sense as Limerick?

No, the cause is chiefly sectarian. In fact, the juries being mixed agree to differ.

1462. In other counties you think that the juries have generally done their duty satisfactorily with regard to sectarian cases?

I have found Londonderry do its duty very well, and I have found Antrim do its duty very well. Of course there are exceptional cases where one is dissatisfied with the verdict, but in the main I have found both those counties do their duty very well. Down is very good, I think.

1463. Take Tyrone?

I have a curious experience in Tyrone. It was the first circuit that I ever went after the Act of 1871 came into operation, and I had to preside at the trial (although I was not the criminal judge) of Montgomery, the police officer, who was

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was tried and subsequently convicted of the murder of Mr. Glass, a bank clerk. It was a very serious and important case; it had been tried before my Brother Lawson at the previous assizes under the old system of jury. There was a disagreement. Then I had to try it by reason of my colleague having been Attorney General in the case. When I went into court I was amazed at the crowd in court of, apparently, a very inferior class of peasants. I was surprised at their coming into that court, where the general business of the assizes was not going on, and I asked who were all those men, and I was told that they were the jurors. I really was aghast. Without saying anything disparaging, you had nothing to do but to look at the men to see that they were of a class entirely unfit to cope with such a case. Then the jury were called, and then, for the first time, did I see such a number of men struck off by the Crown.

1464. That was a jury under the Act of 1871, before it was revised?
Yes.

1465. What was the resul of that trial?
The result of that trial was a disagreement. Then I think there was a temporary Act, and they tried him again. I think there was an adjournment of the assizes; I forget how it was; at all events, I tried him again, and there was a marked improvement in the jurors in point of intelligence, and he was convicted and executed.

1466. That was in the year 1873?
That was in 1873.

1467. Had Lord O'Hagan's original Act been amended then?
I think there was a temporary Act in 1873.

1468. In that case was there any peculiar feeling, one way or the other, amongst the people?
I think not at all. It was suggested, in a vague way, that there was something of the kind, but I could not see it; and subsequently the new jury, I thought, did their business with great intelligence.

1469. Lord *Penzance.*] Was the evidence very plain in that case?
It was a remarkable case of circumstantial evidence. It was the class of case that I would be very much afraid of with the jurors in other places that I spoke of. To our educated mind it was clear to demonstration, almost as strong as if you had seen the man do it.

1470. *Lord Privy Seal.*] You described the way in which you have seen jurors in some cases influenced by a defence by way of *alibi*, and ready to act upon it in spite of all evidence to the contrary; in such cases as that, do you think that the cause can be mere stupidity; is it not necessary to admit the presence of other causes beyond mere stupidity?
I have done so. In a case like Montgomery's I would put it down to a complete want of intelligence. In a case, such as you are putting to me, I think the want of intelligence and want of self dignity, and the want of sense of duty, would combine.

1471. But does it not imply a readiness and a desire to seize hold of any pretext to avoid convicting a prisoner in certain cases?
I think that a very intelligent jury may fall, and honestly fall, into the error of thinking that if two men, apparently faithworthy, whom there is no reason to disbelieve, or, if you like, no special reason to believe, come up and swear to a fact positively, that ought to be sufficient to raise a doubt in his mind, he being incapable for want of intelligence of seeing corroborative circumstances that support the other testimony. For instance, take the case of a police officer, an ordinary jury who are not very highly educated are addressed by counsel who ask them, Will they believe this man? Policemen always, say that every man is guilty, and all the rest of it. Will they believe him against this respectable man, who has no interest in the matter whatever?

1472. But I presume that that very strong and indignant language of yours at

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Limerick was not produced altogether by a sense of the mere stupidity of the jurors?

I own, I think, that it was very largely, I will not say altogether. I am satisfied that they were men who, from a mixture of what you may call, if you like, dogged perversity and want of intelligence would not convict; but I think that, in many cases in Limerick, the want of intelligence is largely the cause of the failure. I find the very same thing occurring in civil cases where there is no disturbing element whatever. If I only found it in criminal cases, and in criminal cases of a particular class, I would then be very much inclined to say that it was not dependent upon want of intelligence; but when I find identically the same men utterly incapable of understanding the issue which they have to try in a simple civil case, I cannot attribute it all to determined corruption.

1473. But we have been told by one witness after another that the same jurors who will convict upon sufficient evidence in cases of offences against property, such as larceny, and so on, will not come to an agreement, even when the evidence is sufficient in cases of another class, such as assaults or agrarian cases; does your experience confirm that or not?

In cases of offences against property, there is very rarely that conflict of evidence, or controversy which takes place, as a general rule, in all these cases of charges of violence. They present totally different features, and, of course, in cases of violence, some of the jurors not being of superior position and intelligence and education, will sympathise with the prisoner in the dock, and think that it is no harm to acquit him; whereas, in the other case, they would have no sympathy with a thief.

1474. I suppose one must admit, as a matter of fact, that in many cases of that class the accused man is not, speaking generally, a man of degraded character, or belonging to the ordinary criminal classes?

Certainly, and that is the distinction.

1475. And, therefore, he is more likely to have the sympathy of men of his own class?

Sympathy, or pity, or whatever you please to call it. It is not that the jurors absolutely sympathise with the crime, but they have a friendly feeling towards the prisoner, and they think it no great harm to let him off.

1476. Do you think that there would be any possibility of making any change for the better in the system of challenging for cause, as distinguished from the peremptory challenge; I am not quite sure that we have had before us an accurate description of the way in which challenge for cause shewn is now worked, or can be worked under the existing law?

The system is this: take a case of felony, where only the prisoner has the right by common law to challenge peremptorily. He has a right to 20 challenges, without giving any reason whatever for them. When his peremptory challenges are exhausted, or it may be beforehand if he does not want to exhaust his peremptory challenges, he says, "I challenge that man for cause." Then he has to assign his cause. Technically it ought to be written out on parchment, but in practice it is not so; it is taken down on the Crown book. He states his cause; under the old system it would be some want of qualification, or it may be that the man is partial and has expressed a decided opinion upon the case. Then, if the prosecution contradict that, and say that the man is not a partial man, and that he never did give any opinion, then that is tried by what are called triers, and they determine the truth of it.

1477. Viscount *Hutchinson.*] How many triers are there?

Only two. The case is tried, and the fact is found one way or the other.

1478. *Lord Privy Seal.*] Is not that a cumbrous process?

It is not so very cumbrous. It is not resorted to once in 500 trials; you never hear of it. The Crown have no peremptory challenge, but they have the right to say, "Stand by."

1479. Do you think it would be possible to provide a more ready mode of challenge for cause; for instance, to enable the judge to decide off-hand, either in

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in the case of the Crown's challenge, or of the prisoner's challenge, whether the cause, in his opinion, was sufficient?

Practically speaking, in 19 cases out of 20, it is the judge that decides it, for it generally turns on a question of law; or the juror is interrogated about some questions of fact, and he gives his answers, and the judge says, "There is nothing in this, swear him," and there is no more said about it.

1480. But as the law now stands, it is not the judge who decides in the first instance upon the validity of the challenge?

No, unless it is a question of law.

1481. The judge has nothing to do with the facts?

Strictly speaking he has not, but, as a matter of practice, he decides it. If it goes to the regular trial, the proceeding is the same as on the trial itself, only that it does not occupy so long as the trial itself, and also with the exception that you have, as a rule, two triers only.

1482. *The Lord President.*] Does the judge charge them as he would in any other case?

He does, but of course the point is always a very narrow one, and it does not last long.

1483. Lord *Penzance.*] That is very rare, is it not?

Very rare; except in political trials we never hear of it.

1484. *Lord Privy Seal.*] Supposing that the prisoner's right of challenge without cause were curtailed, do you think it would be possible to put his right of challenge with cause upon an easier footing, and leave it to the judge?

I think that would involve very considerable changes in the law, unless you meant to enlarge the area of what would be cause for challenging a jury, which would be a very difficult and complicated thing to do; and I would not like to answer on it off-hand without considering it.

1485. Are the admissible causes of challenge defined by law now?

Yes. Generally speaking the ground of challenge used to be want of qualification; but under this system, when once a man is put on the juror's book, no challenge can be allowed for want of qualification.

1486. That would apply alike to all cases; but I am thinking of a challenge with reference to the particular trial on hand?

I do not see my way to that at all.

1487. But under what conditions or directions of the law do these triers act?

Under the common law. It may have been embodied in some of the declaratory statutes, but it originated in the common law.

1488. I suppose that they very often require the direction of the judge?

Certainly; but, generally speaking, the judge has the control of the challenge in his own hands; and that was one of the safeguards which, if a more modified alteration of the law had been originally adopted, I would have suggested to prevent partiality on the part of the sheriff. I think that by a careful and vigorous administration of the law by the judge with regard to the challenge of the array combined with the prevention of any improper discretion on the part of the sheriff any danger would have been obviated; but, as I have already stated, the time for all that has, in my opinion, gone by.

1489. Do you think that a more careful and vigorous administration of the law with regard to challenge might not now be devised?

I do not know in what direction you mean. Lord Derby was suggesting a limitation of the number of peremptory challenges.

1490. I mean in the direction of a possible substitution of a more efficient system of challenge with cause on both sides, for the unlimited power that the Crown now has of ordering jurors to stand aside, on the one hand, and, at all events, for the present extent, of the prisoner's peremptory challenges on the other?

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I do not know what system you would adopt. Supposing, for example, that the Crown solicitor is informed that such a man is a man of a certain want of intelligence, certain proclivities, certain associations that render him quite unfit to be on the jury. He says, "Stand by," and that man will not be called unless there is a failure of a sufficient number of jurors, which very rarely indeed occurs. Supposing the Crown solicitor was obliged to give his cause in the first instance, however much you extend the area of what would be cause, there would be that great difficulty of proof. There a great many things which are perfectly true, and are well known to parties who are interested, but which it would be utterly impossible to prove in open court on any system which you could suggest. For example, the Crown solicitor is informed, on the most excellent authority, that friends of the prisoner were seen associating with this juror, in close conference with him. That raises a fair suspicion. At the same time the Crown solicitor may not be able to prove one iota of that, though it may be perfectly true.

1491. Would a reason, or cause of that kind, be brought before triers if the triers were appointed?

I think so; it should be. Challenge for cause must consist either of law or of fact. If it is of fact, it must be proved; if it is of law, it must be decided by the judge as a matter of law. Again, take the case of a prisoner; he is credibly informed that a certain juror has been known to express himself very adversely to him in the case. He may be utterly unable to prove that, and therefore he challenges peremptorily in that case, because he could not prove it.

1492. I suppose that if, by rasing the qualification, the jury panels were much reduced in number, the Crown's power of ordering jurors to stand aside would lose something of its efficiency, would it not?

Certainly.

1493. The men would come round again?

Certainly; but then, as against that, if the qualification has the effect of eliminating men to whom there would be an objection, of course there would be a compensating element.

1494. Under the old system, I suppose, the service of jurors was more severe than it is now, was it not?

Yes, I never heard them complain so very much of it. I was astonished to hear Mr. Bottomley say that the assizes at Belfast only lasted a week. I am sorry to say that that is not my experience. I often go there, and they often last a fortnight, and they generally last 10 days. In Dublin there was a great abuse, which I think this Act of 1871 was largely aimed at. The respectable mercantile men who would not attend to serve on the special juries, the ordinary shopkeepers would not attend to serve upon common juries. The result was both special and the common panels consisted of a number of *quasi* professional jurors, men who had not much to do; sometimes men to whom the fee was an object; and, having nothing else to do, they apparently amused themselves, and probably not without a view to emolument. That was very much complained of and, amongst others, by the mercantile men, who, until Lord O'Hagan's Act was passed, had been with the greatest possible difficulty got to attend. It was said that those jurors were corrupt; but I think these statements were very often made without much foundation. I have had no opportunity of dealing with matters of that kind. I was an advocate, and I always studiously avoided having any connection whatever, directly or indirectly, with challenging jurors or setting them aside; but it was thought a disadvantage to have the jury panels at Dublin always composed of the same people.

1495. But you think that the qualification of jurors might be raised to such a height as would produce a sufficient jury list, the supposition being that a juror might even be expected to serve twice a year?

Yes, even if it came to that as a maximum; but I think that that would be very severe.

1496. Still

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1496. Still you would not shrink from that if it were necessary?
Certainly not. I think that no effort ought to be spared to endeavour to carry on, as nearly as possible, the system which has now been in force for so many years.

1497. And to get the most intelligent jurors that can be found consistently with the necessities of ordinary business?
Certainly.

1498. *Lord President.*] The triers, I think, now can decide on cases of individual challenges against jurors, but they can also try the whole question of the fairness of the panel, can they not?
If there is a challenge to the array.

1499. You have known in Ireland cases in former days where the whole panel has been challenged, have you not?
I have seen it done once.

1500. Was that in Monaghan?
No; I was not there. I was counsel in a case where it occurred once in one of the Fenian trials. That was a challenge to the array, and it was tried by triers, and they found for the panel; that the sheriff was not partial.

1501. You must be aware of the other case that occurred in 1879?
That was a case tried before the then Mr. Justice, now Lord Chief Justice, Morris in Monaghan; I recollect that case perfectly well.

1502. Has there ever been a case, since the new system has been adopted, of the whole panel being challenged?
I think there was; but it could not be upon that ground, because when once Lord O'Hagan's Act was passed, the sheriff could not be accused of partiality.

1503. It puts that completely out of court?
It does.

1504. In former days cases were known in which the sheriff was accused of partiality?
Yes.

1505. Lord *Monck.*] There was a challenge to the array in O'Connell's case in 1844, was there not?
Yes; but that was on a different ground. The challenge was not that the sheriff was partial; it was, I think, that some person had stolen some of the lists; and that was the difficulty that brought the case into the House of Lords.

1506. *Lord President.*] In the Monaghan case the triers found for those who challenged?
They did.

1507. Lord *Inchiquin.*] Have you noticed on the Munster Circuit, that almost every well dressed and respectable man on the jury is challenged peremptorily by the prisoner?
I have seen that adopted as a very safe and good way of challenge.

1508. *Lord Privy Seal.*] Do you not think that the judges could do more than they have done in securing and enforcing the attendance of the higher classes of jurors?
I am very glad that you have asked me that question; it is a most difficult thing to do; you cannot well do it unless you have a defective jury. Supposing that a panel is called over, and that 12 men answer to their names, you cannot fine a man that has been called, simply because he did not attend. For example, I do not know how much money I should have fined a certain noble Lord, for he never attended at all by any earthly chance. More than once we have tried to enforce it by fine, but then they send in an excuse, and say they were away and so on, and that they have many other things to do; and if the work is done it is not the business of the judge to be a sort of executioner in that way. With reference

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reference to what Mr. Bottomley said, as to the fines being inflicted, under the Act of 1876, when the panel is called over on the first day of the sittings, I think he is rather mistaken in saying that the fines are not enforced; I think they are more enforced than he was aware of. A juror does not attend; perhaps a train does not suit him, or something of that kind, and he is not there when his name is called; a 2*l.* fine is recorded against him, and he then comes in the next day, and he says, "Here I am; you fined me yesterday, and I am ready to serve for the whole assizes;" and, although perhaps it is not in strict accordance with the statute, we generally, as a matter of course, remit the fine for him, upon the understanding that he does serve.

1509. But I suppose that this small fine, which effectually secures the attendance of the lower class of jurors, has no effect upon the attendance of jurors of a higher social class?

I am not so sure of that. I will tell you how it operates. They come in and answer to their names on the first day, and so save the 2*l.*, then they depart, and they do not answer again.

1510. Earl of *Derby.*] You have the power of fining them in that case?

Certainly, if we are calling the panel over on fines. The practice is, that if you get a sufficient attendance you never fine. You do not take an individual and impose a fine upon him because he does not answer to his name.

1511. *Lord Privy Seal.*] But you could do so, I suppose?

I think you could, but it has never been done in England or in Ireland.

1512 The view of the judges is, that as long as they get the work done, and juries formed, they are unwilling to fine the absentees?

I certainly never saw it done in practice as long as you get a sufficient number of jurors.

1513. *Chairman.*] But is it quite clear that the law would permit of a fine being imposed in such a case?

I think it would.

1514. Lord *Penzance.*] Surely there is no doubt that the judges have a power to fine jurors who do not attend?

I have never seen it done except where there was a failure of justice in some way. There is a very serious question raised now as to the power of the commission judge to order additional jurors to be summoned before it has been established that there is an insufficiency of jurors to do the work. I myself should be of opinion that it was in the power of the judge to fine, but I never saw it exercised where a sufficient number of jurors answered.

1515. *Lord Privy Seal.*] But the result of that practice and view of the judges is that the higher classes of jurors do not serve so often as they ought to serve?

I think that a great deal too much stress is put upon the non-attendance of the upper classes, because if you examine any jury panel you will find that the number of such men on it is so small that positively it is not worth speaking of in the majority of cases.

1516. *Chairman.*] You have made a suggestion to-day, to the effect that the list might be very much strengthened by including upon it certain persons having what, for the sake of convenience, I will call a fancy qualification?

Yes.

1517. What would you gain by that if persons of this class were enabled to shirk duty on the jury, owing either to the non-imposition of a fine or to the fine being so small that they could perfectly afford to pay it?

I never suggested that you would very much enlarge the panel and the attendance; but what I suggested was, that it would be a good thing to do, and I never could understand why it was not done when the Committee recommended it before.

1518. But if it was done it would be clearly done, would it not, with the object of getting on to the panel a sort of leaven of intelligence and education?

I think

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I think that the more men of that class you add to the panel, the more you increase the chance of getting men to attend. If four or five men of the same class can meet and sit together in the jury box, it is human nature to suppose they will be more likely to attend; whereas one man will not like to sit isolated amongst a lot of strange men of a different class with whom he has nothing in common.

1519. You want first to get persons of this description on to the jury list, and secondly, when once they are on the list to prevent their shirking the duties?

Yes, and if the Legislature thought proper it could make it peremptory upon the judge to fine in the event of absence.

1520. I think that we have had evidence to show that the jury list loses the service of a great number of persons of that class, owing to the number of exemptions in the Schedule to the Act of 1871, under which, for instance, barristers-at-law, attorneys, and solicitors, licensed medical practitioners, civil engineers, and so on, are exempted; have your given your attention to that matter at all?

Not very much.

1521. Lord *Ardilaun.*] It has been suggested that the names of those who did not attend, and who were fined on the first occasion, should be placed in such a position as to call the attention of the judge to their absence on a previous occasion, so as to enable him to deal more severely with them on the next occasion if they did not attend; would you approve of such an arrangement as that?

Primâ facie a man is supposed not to have been summoned before for two years, and the sheriff very commonly says, "That gentleman has been summoned before, but he never attends," and then you fine him accordingly. Then he comes in and he makes a statutory declaration before a magistrate and proves that he was here, there, or elsewhere, and very often the stories are rather doubtful; but nevertheless it is a strong power to levy a fine when a man makes an appeal of that kind, and you are inclined to give credit to his statement.

1522. Lord *Penzance.*] The whole power of fining a juror for non-attendance, and of remitting fines, lies in the discretion of the judge, does it not?

To fine him, but not to remit the fine when once the fine is recorded and the commission is over.

1523. But, practically speaking, the judge is constantly pressed, is he not, by a number of excuses more or less valid, and if no real injury has been done by the man's absence, the judge is inclined to admit the excuses?

Certainly.

1524. Would it not strengthen the hands of a judge if there were some enactment requiring the imposition of a definite fine, to a sufficient amount, in case a man was absent, and defining in some tolerably sufficient and exact language the sort of excuses which ought to be held sufficient for non-attendance?

I have always thought so, and I think that the Legislature might take that into their own hands; but I do not think it is a duty which should be cast upon the judge to be a sort of executioner, and to resist all excuses and entreaties. It is a very embarrassing thing; it is disturbing the judge's mind when he has something very much more important to think of.

1525. If it were laid down that the fines should be imposed and not remitted except upon certain definite grounds, that would release the judge from that embarrassment, would it not?

Certainly.

The Witness is directed to withdraw.

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MR. WILLIAM EDWARD WHELAN, is called in; and Examined as follows:

1526. *Chairman.*] I BELIEVE you are Resident Magistrate at Portadown in the County of Armagh?
I am.

1527. How long have you held that office?
Between 13 and 14 years.

1528. And you have had opportunities of watching the progress of cases from their beginning up to their end, when they are tried by jury?
Yes, very great opportunities.

1529. Have you formed any opinion with regard to the conduct of juries during recent years?
I have, a very strong one.

1530. Will you state to the Committee what that opinion is?
I think that the jury, as at present constituted, is much inferior to what it was, and that it is swayed by party prejudice and by case prejudice. "I mean that in a case of a particular kind, if a man has friends on a jury, the jury is not disposed to convict him;" that I call "case prejudice." "Party prejudice" I call Orange and Green, as it were.

1531. Is there any particular class of offence in the trial of which this prejudice manifests itself conspicuously?
There is, in party business particularly, and also in agrarian business.

1532. The rating qualification of the jurors was raised, I think, by the Act of 1876?
In 1876 it was raised, but it was lowered also in towns from 12*l.* to 10*l.* It is much too low in towns. For publicans it was set at 15*l.*, which was a great mistake.

1533. But did the Act of 1876, in so far as it raised the qualification in the counties, make a considerable difference in the character of the jurors?
I think that, as regards the rating in counties, the valuation is right, but in towns it is much too low. The county jurors are better than they were, and the town jurors are worse. I have known many instances of town jurymen who could neither read nor write, and who were utterly unfit to be on a jury. For instance, a labourer might sit on the same jury as his employer, and that is undesirable; his employer would not like it. I have frequently known a common labourer sit on the same jury with his employer.

1534. Does the 10*l.* rating admit persons of the labouring class?
It does. For instance, a labourer may keep an eating house and thereby become of the value of 10*l.* I have in my mind an instance of that kind.

1535. Then I suppose we may infer from what you have said that you have no great confidence in the impartiality of a common jury when a case is of the kind which you have described?
As at present constituted, I have not.

1536. Lord *Penzance.*] Are you speaking of a particular part of Ireland, or are you speaking generally?
I have been all through Ireland.

1537. *Chairman.*] To what counties does your own personal experience extend?
Mayo, Roscommon, Galway, Armagh, Tyrone, Down, Antrim, and Louth.

1538. Lord *Monck.*] Do your observations apply to all those counties?
My observations apply to every one of them; to the Northern counties as regards party business, to the Western counties as regards agrarianism.

1539. *Chairman.*] Then your experience, I presume, extends back before Lord O'Hagan's Act came into operation?
Yes.

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Yes. I went to the West, to Mayo in the spring of 1868, and I stayed there six years.

1540. Did this peculiarity of the juries manifest itself before the passing of Lord O'Hagan's Act?

Not so badly as it did afterwards, and not so badly at all as since the excitement on the land question has got up in the country.

1541. Have you any suggestions that you would like to make to the Committee with the view of remedying the evils which you have observed to exist?

I would suggest that the valuation in the case of jurors in the towns should be increased; it is now set at 10 *l.* in towns. Then I think that the valuation of publicans in towns, and anywhere in fact, should be increased; they are now set at 15 *l.* in towns, inside a municipal boundary; that is much too low. A publican may be quite unfit to be a juror, and he may still have a house valued at 15 *l.*

1542. Lord *Penzance.*] Up to what point would you say that the valuation should be raised?

I should certainly advance it to 30 *l.*, and I would also make the publicans the same; that is to say, I would raise the valuation from 15 *l.* to 30 *l.* for the publicans, and from 10 *l.* to 30 *l.* for the others.

1543. *Lord Privy Seal.*] Is there any special qualification for publicans in the Act?

I think so. You will find that there is a direction in the Act that they are to be of the value of 15 *l.* and upwards. I think that is in the Act of 1876.

1544. Lord *President.*] But can they be publicans if they have a house under a certain value, in Ireland?

If it is underneath a certain value, I think under 11 *l.*, it is below the qualification for a juror.

1545. *Chairman.*] Have you observed any increase in the unreliability of the juries since the recent agitation?

There is an increase in agrarian cases, but in the party cases it is just the same; there is no increase in them; they were bad enough before and they are bad still.

1546. *Lord Privy Seal.*] Do you agree with what was stated just now by Mr. Justice Barry, that it would be of advantage to raise the qualification as high as would be consistent with providing the necessary number of jurors?

I agree in so far as my own observation goes, with the addition that I have already stated, that is to say, from 10 *l.* to 30 *l.*, and from 15 *l.* to 30 *l.* for publicans in towns. I would leave the county jurors at the same valuation as they are at present, that is to say, 40 *l.*

1547. I think you do not mean speaking accurately, in towns, but the dwelling-house qualification?

It is only in towns that the dwelling-house qualification is 10 *l.* In counties it is 40 *l.*, and for leaseholders, 20 *l.*

1548. The qualification is, "A net annual value of 40 *l.* in respect of lands, tenements, or hereditaments, or a net annual value of 10 *l.* in respect of a dwelling-house, office, and curtilage appearing on the rate book of any union, to be situate within any of the said counties," that is to say, a dwelling-house anywhere in the county; it is not confined to towns?

I am quite sure that the arrangement in Ireland is that publicans rated at 15 *l.* and 10 *l.* householders should be returned.

1549. I am not talking of publicans, but I say that this dwelling-house qualification is not confined to towns; is not that so?

I think it is.

1550. *Lord President.*] I notice that in the Report of the Select Committee which sat on the subject of the jury system, they recommend that a publican should be exempt from service on juries altogether?

I think that would be much better.

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1551. You would prefer that to his having a special qualification?
Certainly. I do not think that a publican is a fit juror under any circumstances, because if he does his duty honestly the chances are that he might lose his custom.

1552. Then you would prefer that that recommendation of the Committee should be carried out?
Yes, certainly.

1553. Your experience as a resident magistrate was, I think, in Mayo for a long while?
Yes, I was there for six or seven years.

1554. You were there during the last Fenian outbreak, I believe?
I was.

1555. Were juries affected in particular cases, or in all cases, in your experience in Mayo?
In any case that was tinged with a party character they were affected. They were affected by fright.

1556. You mean "party" in the sense of Fenian or agrarian?
Yes.

1557. You were there when there was considerable agrarian outrage, were you not?
Yes, there were a great many cases.

1558. And at the assizes or quarter sessions did the juries do their duty?
They did. For instance, you might easily have a tinker, or a pickpocket, or a sheep stealer convicted under any circumstances. Outside that it would be rather difficult.

1559. It was not from want of intelligence that the juries were not satisfactory, but from being under the influence of sympathy or fear?
From having sympathy or fear as to the result; they were not honest, in fact.

1560. And this state of things existed, I presume, before Lord O'Hagan's Act passed?
Yes; that Act only aggravated the matter in so far that it reduced the qualifications a little.

1561. But I understand that you only recommend an alteration of the qualification of the town jurors, and not of the county jurors?
I think that the qualification for county jurors is quite right; it is 40 *l.*, and that is quite enough.

1562. Since you have left Mayo you have been at Portadown, I understand?
Yes.

1563. There, I suppose, you have different cases?
No, I frequently come across cases of a party nature, and the jury are equally swayed by their prejudices in that part of the country.

1564. Orange against Green?
Yes, Orange against Green, and Green against Orange.

1565. In other cases do the juries do their duty there?
They do.

1566. At Portadown would you get the Armagh cases, would you?
Yes, Portadown is in the county of Armagh; I have parts of four counties in my district.

1567. Armagh is in your district?
The town is not, but a great part of the country is, and a great part of Tyrone, a great part of Down, and a great part of Antrim.

1568. Would you agree with Mr. Justice Barry that the juries of Armagh are worse than they are in the other counties which you name?

There

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There is a portion of Armagh which is called Fork-hill, and there is a very bad description of jurors that comes from there; they are small farmers. It is not that they want intelligence, but that they are more prone to prejudices.

1569. How would you remedy the difficulty there?
I think the Crown is quite able to take care of itself. It has 20 challenges, and as many more as they can show cause for, and that is quite sufficient. The Crown can always, if they wish, put off an undesirable juror.

1570. At the same time you do not think that the jury does its duty in every case?
I am certain that it does not in a party case.

1571. And the remedy that you suggest, of the Crown being able to set aside jurors, would not be sufficient, you think, in that case?
I have another remedy. I would suggest that the opinion of the majority of the jury should be taken, the same as under the Scotch system, because one contumacious juror may upset the verdict of all the rest.

1572. I suppose you would prefer a jury to disagree under the present system, than for it to be a verdict of the majority, contrary to the evidence?
I would, because you might try it again if the jury disagreed, and you could never try it again if the jury acquitted the prisoner.

1573. Then, do I correctly understand you, that you would prefer to have the verdict of a majority of the jury?
I would.

1574. Do you think that there would always be a majority of impartial jurors?
Not always, but I think that it is more likely that there would be. I would also suggest that, in the preparation of the jurors' list, the poor-rate collectors should be fined if they made a mistake in the lists that they give to the clerk of the union; and the clerk of the union, unless he could show that it was not his mistake, should equally be fined.

1575. In the counties where you now are, there is a considerable mixture, I suppose, of Roman Catholics and Protestants?
There is.

1576. Are the Roman Catholics mostly to be found in particular districts, or are they scattered?
As a rule, they are in particular districts.

1577. Are they generally amongst the poorer or the richer class of jurors?
We have a very fair amount of wealth amongst them.

1578. If you raised the qualification, would you run the risk of excluding a considerable number of Roman Catholics?
Not the least.

1579. You consider it of importance to have an admixture of both sects on the jury?
Certainly, otherwise you could not have a fair verdict.

1580. In your district, have the people generally confidence in the way in which the jury lists are made out now?
They have confidence in the way that they are made out, but they have not confidence in the verdicts of juries.

1581. Lord *Inchiquin.*] Have you any experience in Munster?
A little.

1582. What is your experience of the juries in Munster?
I thought that they were fair enough. I have no experience in Limerick; but I saw Mr. Justice Barry's remarks about the jury there, and he spoke rather strongly against them.

1583. But you think that the juries in Connaught are satisfactory?

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Not under the present system. There was a very good jury in Galway, if you except the town. There is an equally bad jury in Mayo all through.

1584. But you think that if there are these bad juries in Munster and in part of Connaught, the mere remedy of taking the verdict of the majority of the jury would be sufficient for the ends of justice?
I do not know how you can mitigate the evil without it. It is not a complete cure, but it is the best way to do it.

1585. Have you considered the question of a commission of judges?
I think that would be very undesirable.

1586. Why would it be undesirable?
For this reason, that a prejudice would get up against any judges, and the people would lose all confidence in them, which it is very desirable that they should have. Besides it would be unfair towards the prisoner that he should be tried by judges, whereas he should be tried by a jury of 12 of his countrymen, who are more likely to give a fair verdict than one man, even be that man a judge.

1587. But a great many people think that the jury system has so broken down that something must be substituted for it?
I quite admit that it has to a certain extent broken down. The only curative measure, I think, would be to increase the qualification and to take the verdict of the majority of the jury as they do in Scotland. The Crown can see that there is a jury that will do justice; they have 20 challenges, and that is quite sufficient for any panel in a case of felony.

1588. Then you think that with the power which the Crown has of obliging these jurors to stand aside, it rests with the Crown whether they get a satisfactory jury or not?
Certainly.

1589. But then there is a limit to the extent of the panel?
Yes.

1590. Of course there may be such a short panel there that it is impossible for them to make so many stand asides, and they may be obliged to take an unsatisfactory jury?
There might be individual instances of that, but so long as a jury exists that can be mitigated, though not cured altogether.

1591. Lord *Penzance.*] One word about the present rating value of a juryman. I have before me the Act of 1876; that is the last, is it not?
That is the last.

1592. I find that by the second section of that Act the first schedule of the Act is to be substituted in lieu of the previous provision, and that "every man being a subject of the Queen between the ages of 21 and 65 years residing in any county or in any borough having a separate Court of Sessions of the Peace or a Court of Record for the trial of civil actions who shall be either in his own name, or as a member of a firm, or co-partnership, rated for the relief of the poor in respect of lands, tenements, or hereditaments within such county or borough of the net annual value fixed for such county or borough in the first schedule to this Act." Now in the first schedule I find a number of counties in different groups, and then under the head of Class V. there are these words, "In any borough other than those specified above" (that refers, I presume, to certain boroughs that are lumped in with the counties), "having a separate Court of Sessions of the Peace or a Court of Record for the trial of civil actions a net annual value of 20 *l.* or upwards in respect of lands, tenements, or hereditaments within any such borough." Therefore, it seems that at present the rating qualification in a borough is 20 *l.*?
I took the opportunity of seeing in the county of Armagh, for instance, the instructions issued to the rate collectors, in which they were directed to send in a list of the names of people who were valued in boroughs at 10 *l.* and in counties at 40 *l.*, and leaseholders at 20 *l.*

1593. *Lord*

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1593. *Lord President.*] In your experience as a magistrate, do you often have great difficulty in getting evidence on party questions?
Yes, very often.

1594. There is intimidation or sympathy, whichever it is, used in regard to witnesses as well as juries?
It is sympathy as a rule, and it is very hard to arrive at the truth in party cases.

1595. Are cases often stopped in consequence of inability to procure evidence?
In party cases one party is more inclined than one would wish to go forward or backward as the case may be. There is no hiding of evidence if the injured party wishes to come forward; in agrarianism they are entirely afraid or frightened as it were.

1596. And they very often will not come forward themselves?
They will not come forward in agrarian cases, but they will in party cases.

1597. In a party case, there is a difficulty?
There is great difficulty.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next, Twelve o'clock.

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Die Jovis, 30° *Junii*, 1881.

LORDS PRESENT:

Lord Privy Seal.	Lord Penzance.
Lord Inchiquin.	Lord Emly.
Lord Silchester.	Lord Ardilaun.
Lord Monck.	

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. THOMAS DE MOLEYNS, is called in; and Examined, as follows:

1598. *Chairman.*] You are, I believe, a Queen's Counsel, and chairman of the county of Kilkenny?
Yes.

1599. Would you state how long you have held that office?
About 21 years I have been chairman, and I have also been Crown prosecutor for the county of Limerick for rather a longer period than that.

1600. You have therefore had extensive opportunities of watching the operation of the Irish Jury Laws?
Yes.

1601. You were examined, I think, before the House of Commons Committee in the year 1873 upon the subject?
In 1872 and 1873. I was examined upon two occasions.

1602. May we take it that you are still of the opinion which you then expressed, that the general principles of the change in the law produced in 1871 were expedient?
I am afraid in this as in many other cases the result of experience considerably modifies the impressions and opinions that we then entertained. I was favourable upon the former occasion, being examined immediately after or very shortly after the passing of Lord O'Hagan's Act; but it is almost notorious now that under existing circumstances that Act has not had exactly the results that were anticipated when it was passed.

1603. We may take it, I suppose, that the object of that Act was in the main to amend the law in three directions; first, to get rid of the old qualifications for service on the jury; secondly, to get rid of the sheriff's discretion in selecting juries; and thirdly, to equalise the burden of service upon the jury?
Those, I think, were the three objects.

1604. Then taking those three heads, would you state to the Committee in what respect you think that the operation of those Acts has disappointed expectations which might have been formed?
I think a still greater object in the administration of justice is to secure capable, and competent, and independent jurors; I speak now, of course, with a limited experience; that is in reference to the south of Ireland, and I am speaking as a Crown prosecutor rather than as chairman of the county of Kilkenny, and in reference to Limerick only, although I think the same

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observations will apply to Clare and Kerry, also, in quite an equal degree. I think the failure of the Act is due to the failure of the materials from which jurors are to be taken; that, in fact, there is a uniformity of qualification, and a want of diversity. I have brought with me the panels, which I thought might possibly interest the Committee, for the last three or four assizes for the county of Limerick, and it will be seen that the jurors there, almost exclusively, consist of "farmers." There is no variety, and of course it would be a great object in all trials to endeavour to ensure a diversity of qualifications; at present they all appear, I think, to have the same habits, the same feelings, and to move in the same groove.

1605. You suggested before the House of Commons Committee that the raising of the rating qualification was desirable in order to get a better class of persons upon the jury?

Yes.

1606. Then I suppose I am to understand from what you have just said that the Amending Acts of 1873 and 1876 were not successful in making that change?

I do not think they were; if I recollect rightly the qualification was raised from 30 *l.* to 40 *l.*, but I do not think that has had much effect in improving the general class of jurors, in Limerick at all events, nor I believe in some of the adjoining counties.

1607. You do not think that by merely raising the rating qualification a few pounds, you get into a class of persons who possess more independence and fearlessness?

I am afraid not; the result of the past I think does not warrant that anticipation for the future; I should rather endeavour, in amending the present law, to follow out the suggestions that I then advocated, and I see, upon looking to the Report of the Committee of 1874, that some of those suggestions were adopted by the Committee, without any division, and yet were not carried out in the Act of 1876.

1608. Perhaps you will allow me to come presently to any recommendations you have to make. Then I suppose you have before your mind some cases in which the conduct of the juries has not been satisfactory?

Generally speaking, it is almost impossible to secure a conviction in Limerick where there are disturbing elements; by disturbing elements, I may say that I mean, in agrarian cases, or even cases of bad assaults or faction fights. All those are cases that have disturbing elements in them, in which it is almost impossible to secure a conviction; there is always either an acquittal, or what comes to the same thing, a causeless disagreement, a disagreement without reasonable cause.

1609. Should you say that only in reference to civil cases, or in criminal cases?

I only refer to criminal cases.

1610. You are speaking of your experience as Crown prosecutor?

I am speaking of my experience as Crown prosecutor in Limerick, which I think is perhaps more valuable than my experience as chairman in Kilkenny.

1611. Does what you have said apply to offences at ordinary times, or only at times of exceptional excitement?

To a considerable extent in ordinary times; I need not say, still more so in what I may call the present crisis.

1612. Does that misconduct on the part of the jury arise, in your opinion, from intimidation or from canvassing?

I think I can hardly avoid saying that it arises from several causes; from sympathy, from intimidation, and I think, also from a general feeling against the law which they are called upon to administer, at the present time. If the Committee will allow me, I will mention a case that occurred at the last Limerick Assizes, which may illustrate my point.

1613. If you please?

First,

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First, the calendar presented no fewer than 19 cases of what are called "forcible possession," which I may say presented an almost uniform character; in all these cases (this was their own statement) the evicted tenants had been deported, if I may use such an expression, by armed bands in the night, into their old holdings. When restored, in most of the cases they said that an oath had been administered to them that, under no circumstances, under the penalty of death, should they yield up to the landlords. I must say that this oath they religiously observed; and however urgent the remonstrances of the landlord were, in no case did they violate their engagement. We had to face this state of things in those 19 cases with the jury panel, which I will presently submit to your Lordships; but fortunately (I may say fortunately, I think) in the first case the solicitor for the prisoner elected to plead guilty; and I may mention incidentally that that solicitor has since been lodged in gaol under the late Act, as one of the "suspects," as they are called. However, he elected to plead guilty; the undertaking being that the prisoner should give up immediate possession of the land, and enter into his recognisance to keep the peace, for his good behaviour, and so forth. The case was allowed to stand over for a day to ascertain whether the undertaking was fulfilled; and the undertaking was fulfilled; the possession was given up, and he entered into a heavy recognisance for the purpose I have mentioned. It was thought under the circumstances of the country that this was a very satisfactory beginning, being a formal acknowledgment by these men, when the operations of the Land League were rife, of the supremacy of the law. This example was followed afterwards with some reluctance in the 18 other cases; in all these cases they gave up possession of the land; but in the nineteenth case, with more judgment, I think, the prisoner elected to put himself upon what is called his "country." He put himself upon his country, which means that he pleaded "not guilty"; and I need not say the result that followed. The case appeared to be a clear one. I will not say more than that, as the case is still pending; however, the jury disagreed after a very strong charge from the judge, who was examined here on Tuesday (I do not know whether he adverted to it), and were dismissed with the remarks, which, I believe, have been the subject of considerable comment. When I state that the prisoner put himself upon his "country," perhaps your Lordship would like to see a copy of the panel. I do not know whether your Lordship has already seen the panels?

1614. No; we should like to see them?

They will give a better idea, I think, than anything else. This is the panel we had to try the 19 cases of forcible possession with; the spring panel of Limerick of 1881. I will hand it now in to your Lordships. It appears that out of 130 names, there were but two persons marked as "gentlemen," and no "esquire" or "justice of the peace." There is an uniformity here; the whole of this first column you will find are farmers. In the whole of this second column there are two persons marked "gentlemen" as a description. I do not find any magistrate or anyperson marked as "esquire"; that is a mere definition, of course; but I do not find any of those upon that panel (*handing in the documents*). I think those panels may give the Committee some idea of the difficulties one has to contend with in the working of the Act upon what is called the alphabetical and dictionary order.

1615. The list appears to be composed, with half a dozen exceptions, entirely of farmers?

Entirely of farmers; and of course I need hardly say that their sympathies, their feelings, and their fears operate to a very natural extent in preventing their doing what is called impartial justice.

1616. A jury so composed would scarcely require intimidation, I suppose?

Scarcely, I think, because the very class of crime they are called to decide upon is the very class which it is their impression furthers their own interest. I have also, without troubling your Lordships with it, the summer panel of 1880, the one before that which I have handed in, and out of 120 jurors here, I find there are two magistrates, one person described as a "gentleman," and one person described as a "bank manager"; that is four out of 120, and that is the

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summer panel of 1880. I have also obtained the panel (though it has not been finally printed) for the approaching summer assizes, which will be held next week, for Limerick; and I find that out of 148 jurors (that is a still larger panel), there is one son of a Peer, or "Honourable," three magistrates, and two persons described as "gentlemen." That is six out of 148. I may mention to the Committee one of the cases about to be tried with this panel. One of them is a riot, and a very bad assault case apparently, in which a person sent from Dublin to serve processes on Lord Guillamore's property, and the land agent were very badly beaten; the process-server being stripped naked and turned out on the road. My object in producing these panels is merely to show what results inevitably from strict adherence to what is called the dictionary and alphabetical order; in fact I commenced by saying that the materials appears to be wanting for a diversity of qualification.

1617. When you talk of that being the result of strict adherence to alphabetical rotation, are you contemplating any alternative by which these results could be avoided?

That is a very difficult question. In the first place I would endeavour to leaven the mass with some of the recommendations that were unanimously adopted by the Committee of the House of Commons of 1874, and adopted without a division, I observe. One is, by introducing persons who answer the description of what are called "qualified resideuts." I think they mentioned the sons of magistrates, graduates of the university; for civil purposes, perhaps retired officers of the Army and Navy; at all events, there might be educated classes obtained, resident, but not rated; that is to say, you might depart in this instance from the strict rateable qualification in favour of independence and education.

1618. The effect of introducing qualifications of that sort, would be to increase that minority of specially qualified persons who are now to be found on the jury list, to increase the number?

To increase the number.

1619. But it still would be a minority?

A very considerable minority, I am afraid. There was another suggestion I made.

1620. Perhaps we had better just follow that one up before we leave it; the minority would still be a small one?

The minority would still be a small one.

1621. Therefore, if you were desirous of placing upon the jury members of that minority, sufficiently numerous to constitute the sort of leaven which you have referred to, it would be necessary, would it not, to have recourse to some means other than purely mechanical selection?

As far as that goes, I think those persons could be returned by the poor law collectors, who know all residents in the barony; they would be returned on the list by the poor-law collectors, and then they might be placed in the alphabetical order. I am now merely endeavouring to introduce by suggestion other classes than the rated farmers; and they would come in, I take it, in alphabetical order with the "farmers" just as the "magistrates" do now.

1622. I am not recommending, but merely pointing out to you, that unless there were some means of giving a preference to persons of that class, they would still be left in a hopelessly small minority on the jury list?

Certainly, but still it would be a something; that is all that could be done in the present state of things.

1623. Lord *Penzance.*] And then the peremptory challenge of the prisoner might remove those that were there, might it not?

Yes, it might exhaust those.

1624. *Chairman.*] We have had some evidence pointing to the conclusion that jurors of that better class being, to begin with, in a minority, are to a great extent excluded from the jury-box, by several causes; one of these being their liability

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liability to be called upon to serve on special juries, which would keep them away from the common juries?

I am now speaking with regard to the criminal panel. I think you will find that at the assizes all the jurors are returned indiscriminately for the panel; that is, the special and the common jurors, which is an advantage that the assize panel has over the quarter sessions panel.

1625. Lord *Penzance.*] I think what the Chairman is alluding to is this; that the civil assizes are going on at the same time as the criminal assizes; is not that so?

They are.

1626. At the assizes, as we all know, there are many civil cases which are tried by special juries?

Yes.

1627. Does it not happen that many of the special jurors may be serving on those cases, and could not form part of the jury in the criminal court?

It does so happen, certainly. Of course if there is a special jury case going on, and they are sworn upon it, that is a ground for exemption in the other court.

1628. That must absorb a number of the special jurors?

Yes; that is, when there are special jury cases, but there are not so very many special jury cases at the assizes.

1629. *Chairman.*] With regard to the right of challenge now allowed to the defendant, is the operation of that to exclude jurors of the better class?

I should say, certainly.

1630. So that what we come to is this; that the better class of jurors are in a small minority to begin with, and, from a variety of causes, that small minority is kept out of the jury-box?

Certainly. There was another suggestion, if I may now approach it, which I made also before, and was favourably received then, and agreed to by the House of Commons' Committee, without a division; which would produce, I think, a considerable accession of the better class to the list; that is, that where there are "Counties of cities" such as Limerick, Kilkenny, Waterford, Cork, and so on, the jurors of the Counties of cities should be placed also upon the county panel; that would lead to a very considerable infusion of persons of a different class, of different habits and ways of thinking. I should not propose a complete fusion, but that the jurors of the Counties of cities should, besides serving upon juries for the trial of their own special city cases, appear also upon the county panel. And the reason I would recommend that, is this: that in those Counties of cities they have very little business ordinarily at the assizes to perform, and they are never called upon to leave their own cities, or to incur any expense; therefore, I think they might very fairly take their turn upon the criminal panel, in trying those criminal cases from the county which are tried within the city. That would produce some hundreds of jurors.

1631. You do not propose the fusion of the two lists, as I understand?

No.

1632. But that jurors on the city list should be on the county panel as well?

I propose that they should be incorporated, if I may say so, into the county panel. If there was a complete fusion of course the large county panel would swamp the present city jurors, who are of a better class considerably than the ordinary county jurors. That was taken up, I think, by Sir Michael Hicks-Beach, who was in the Chair of the Committee of the House of Commons, and agreed to without a division. There were divisions upon many points, but that was agreed to without a division; it has never been carried out.

1633. That would bring on to the panel a number of persons, probably, of the tradesmen class?

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Yes; very respectable persons in the city, mercantile persons and tradesmen, at all events, persons less within the reach of intimidation, and less perhaps within the reach of sympathy. These, of course, are merely suggestions that occur to me for the purpose of what I have called, leavening the mass, and introducing a different element into the uniformity of these panels. Besides, one man of education and trained habits of thought, who is able to follow the links of circumstantial evidence, will have an influence beyond his mere numerical position in leading the remainder of the jurors.

1634. Have you given any attention to the schedule of exemptions of the Act of 1871?

There are a few perhaps that might be withdrawn. Everybody claims exemption; for instance, managers of banks.

1635. The point of my question was, whether the exemptions might not be rather too numerous?

I think they are rather numerous; for instance, every distributor of stamps is excluded, and others of that class; but I have not paid any particular attention to that matter.

1636. You do not make any particular recommendation on that head then?

No, I have no doubt the exemptions might be diminished.

1637. I am afraid we must gather from your earlier answers, that in a certain class of cases, and particularly under certain circumstances, there is very little chance of a jury doing its duty?

In the part of Ireland I speak of, I am afraid I have no other answer to make.

1638. Have you any suggestion to make as to the course which might be adopted in order to ensure justice being done?

I think one suggestion that I would venture to make would be this, that power should be given to a single judge of the superior courts, in a fit and proper case, to order a change of venue. For instance, suppose a very bad case, a very unwarrantable case of disagreement, in a case of sufficient importance to warrant such a step, I think a single judge might direct that case to be tried in any venue in which he considered that an impartial and satisfactory trial would be likely to be obtained. At present these applications have to be made to the Court of Queen's Bench, with a degree of trouble that is not desirable. If the power were given to a single judge in fit cases, I do not see why he should not be entrusted with the discretion, and it would be, perhaps, a less violent step than others which might be suggested.

1639. Would the venue in that case be changed to some other part of Ireland, or to Dublin?

Some other part of Ireland, or to Dublin. I would give the discretion to the judge. In some parts of Ireland it might be sent to a neighbouring county; perhaps in some of the counties the necessity might never arise, in others it might be that Dublin would be the proper place to transfer it to; but I would leave all that, as a matter of arrangement and a matter of discretion, with the judge.

1640. Have you considered whether in a certain class of cases, it might be advisable to increase the summary criminal jurisdiction of the magistrates?

I think it would be very desirable, in this point of view, that you would not have to test juries in cases which it is very difficult to expect them to decide satisfactorily. On the other hand, the only difficulty I should feel, and I hardly know how to express it, is this: that it would throw an invidious duty upon the magistrates, and, perhaps, create difficulty by increasing the distance that now separates them from the people. It seems a hard thing to throw upon them, I think, more onerous duties than they have at present. I would endeavour to make as few subjects of difference between the magistrates and the people as one could possibly suggest. I have got a panel here from Kilkenny, and it may be desirable to hand in that also (*handing in the same*).

1641. Lord

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1641. Lord *Emly.*] Is it for the quarter sessions, or for the assizes?
For the assizes. It appears to have been a rather more satisfactory panel than those I have mentioned. Out of a panel of 171 there are 10 persons marked as "gentlemen," two as "justices of the peace," and one as a "woollen manufacturer." That is the state of the panel there; and this, I may observe, is the panel for the spring assizes of Kilkenny, at which the Boyd murder was to have been tried, but an application was made and acceded to by the court, on the ground of the unsatisfactory nature of the panel, and the influences that were then supposed to be at work generally, throughout the country, to transfer the case to Dublin. But in some respects this panel appears to be more diversified than those I have already alluded to. The general result is that which I have mentioned. I think it right to say also, with regard to my experience of Kilkenny and the quarter sessions there, that I have much more reason to be satisfied with the operation of the Act in that county. I think the jurors are, generally speaking, more capable and more intelligent; and I have really had very little occasion to be dissatisfied with the verdicts in criminal cases at the quarter sessions. My experience is limited as to Kilkenny. The more critical cases are sometimes (not always) sent to the assizes; but I am still bound to say that where there are strong disturbing elements, there would be a difficulty in securing a conviction in what I should consider, perhaps, to be a proper case. I am speaking now of the county. But it is much more satisfactory than what I have already stated with regard to Limerick and the southern counties. I had several criminal cases last week in Kilkenny, and I have no reason to find fault with the operation of the Jury Act there; but still the same general feeling, I believe, exists wherever there is a case connected with land, which enlists prejudice and sympathy, or local influences.

1642. *Lord Privy Seal.*] I suppose the juror's panel is always and everywhere framed precisely as these two panels are?
I should take it to be so.

1643. That is to say, one name beginning with each successive letter of the alphabet placed in order?
Yes.

1644. Then the alphabet begins again?
Letter "A" the first name; letter "B" the next name; letter "C" the next name, I take it to be. That is what is called the strict dictionary order; and the result of the panel merely proves the extreme prevalence of the one class.

1645. I want to understand exactly how the panel is framed. I see this Limerick panel begins with the letter "P"?
I suppose that is where it left off last time, probably; I am not exactly conversant with the mode in which the sheriff manages the more formal part of the panel. I suppose the letter "O" was the last letter from which a juror was taken; then they would commence, I think, with the letter "P."

1646. Did I rightly understand your suggestion as to making use of city jurors to act upon county juries; do I understand you to mean this, that you would add the city juror to the county jury, but that you would not add the county juror to the city jury?
That is my meaning.

1647. Why do you confine that to the counties of cities?
Because they are the only places which have what are called city jurors. I mentioned Limerick, Waterford, Kilkenny; those places are called counties of cities, and have a separate panel of jurors, who try the cases that arise within those cities; they are, in fact, the residents within the ambit of the city.

1648. Then the jurors resident in any town or city which is not a county of a city are at present available for county cases, I suppose?
Within a certain limit. I think there is a 10 *l.* qualification for householders in towns within the county; that there is a 40 *l.* rating qualification, we will say, for land in the county, and a 10 *l.* household qualification; that is the rating in towns, not counties of cities, within the county.

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1649. In the case of a county of a city having a panel of its own, the city jurors are unavailable for county purposes, are they not?
Yes.

1650. That is the reason why you make the suggestion, I suppose?
That is the reason why I make the suggestion.

1651. Can you explain why on this Limerick panel the number of jurors living in country towns or villages is so extremely small?
Your Lordship will observe only a few shopkeepers.

1652. I think I counted four or five in the whole panel?
In the first place, I think Limerick has not many towns that have houses of value in them. In that respect it is very much an agricultural county, and the towns have not houses of any considerable value; that is the only way in which I can account for it.

1653. Does it not appear very strange that among 130 names there should be only four or five shopkeepers?
So it would appear, and I take it for granted that the panel has been properly framed. Some of them are described as both shopkeepers and farmers; where there are shopkeepers and farmers, I take it that the farming is still the predominant element.

1654. Do you think that that state of things is inevitable, or is it due to any want of care upon the part of those who form the jury list?
I have no reason to think that; I think that it is the natural result of the great predominance of the farming element.

1655. Did I understand you to say that you attach little or no importance to the further raising of the rating qualification?
I do not attach much importance to it; and there is also this difficulty that always attends that suggestion, that you may diminish the number of jurors so considerably, that the pressure upon the remainder will be very great; that applies, at all events, to quarter sessions, and has been always an argument against raising the qualification too high.

1656. Supposing it was found possible to raise the rating qualification still further, and yet to leave a sufficient body of persons to act as jurors and to form panels, would you in that case recommend a further raising of the figure?
I certainly should, upon that assumption.

1657. Are you able to say whether under that condition the figure could be raised?
I cannot say now; but upon looking to the Report of the Committee of 1874 I find that that subject was gone into then particularly, and I think returns were furnished of the number that would be left, and the number that would be exhausted, and so forth.

1658. Do you think it would be possible or reasonable to require rather more frequent service from jurors than the present Act requires?
They complain very much, as it is, of the hardship; and in some of the large counties, in Cork and other places of that sort, the hardship is very great of course, upon jurors brought up from their homes, who, though they may be rated at 40 *l.* a year, can ill-afford, at any rate, some of them, to attend the assizes, and be kept for the period which they are obliged to be kept there.

1659. Do they complain of serving once in two years?
I think they would complain of serving more than once in two years.

1660. You think they would?
I think they would. There is no disguising the fact that it is a very unpopular service as it is. It is a thankless service, it is an unpaid service, and it is a service that occasions expense and odium; and naturally, as long as mankind have these feelings, there will be complaints upon their part.

1661. Do

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1661. Do you not think that the present law is extremely indulgent?

I think every effort has been made to render it as little onerous as possible. We are struggling with difficulties in every way we turn, the great and first object being, of course, the administration of justice, by capable and intelligent jurors, not liable to intimidation, and the next object being not to make the service more onerous than it can possibly be made to those who have to perform this service, and I think also we may sometimes enter into their feelings, when these persons return to their respective homes they are there exposed to many influences, which need not be named, but which we can hardly duly estimate. Taking away the question of land, numbers, for instance, are charged with bad assaults, or with being concerned in faction fights, or riots; if the jurors were to do their duty I need hardly say what would be the natural result when they returned to the vicinity from which they came.

1662 Have you said all you wish to say as to the possible means of bringing the higher class of jurors into the jury box?

I see no other means than those which I have suggested. The present rating qualification ought to include all the higher classes *per se*, except those I have mentioned, who may be persons of education, and yet not rated All the higher classes, those who are magistrates, those described as esquires, and merchants, and so forth, would necessarily be rated at 40 *l.* a year, and considerably beyond that; but still the number is so small, as compared with the mass of pure farmers (perhaps numbering 2,000 in a county, or in large counties 3,000), that the proportion is as it appears upon those panels. I have no reason to doubt that those panels have been most accurately framed; and I believe it is the same all over Ireland in that respect.

1663. There being only two names upon this panel described as "gentlemen," that is your opinion?

It was with that view that I thought it might interest the Committee to see these particular panels, as the natural and unavoidable result of the present system. I may, perhaps, also be pardoned for adding that I think there are two questions to be considered; first of all, the working of the Act under ordinary circumstances, and secondly, the working of the jury system under the present (I hope exceptional) circumstances of the country.

1664. I was about to ask you a question upon that point; do you draw a broad line of distinction between the working of the present jury law before the existing agitation sprang up and since?

I draw a distinction. It was unsatisfactory even before, in these trying cases, where I may say the disturbing elements entered; but I am bound to say I do not believe that any amendment you can introduce would at the present moment, or for the last few months, have produced much more satisfactory results; that, in fact, the Act is hardly fairly tried at present.

1665. If the present agitation were to subside, would you have better hope of even the present jury laws than you have now?

I should have better hope, and I expressed myself formerly, I think, as having a better hope; that is, that time would improve the jurors, and give them habits of business, and other habits which might in time fit them as a class to be jurors.

1666. Some witnesses have told us that until the present agitation sprung up, the juries had been, during a few years, improving; is that your experience?

Was that in the South of Ireland, Limerick and Clare?

1667. Yes?

I do not find it so myself. Of course those are matters of opinion; indeed, I think I may add, that at one or two assizes we thought the results were rather more satisfactory; but still the great difficulty is that there is an absence of what may be called the ordinary types of crime in the parts of Ireland I allude to; almost every offence arises out of, or is connected in some manner with land, and when the persons who are to administer the law are purely persons connected with the land, of course a difficulty arises.

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1668. For instance, that offence of which you spoke just now, of taking forcible possession, I suppose in ordinary times it is not a common offence?
It is not a common offence.

1669. Lord *Monck.*] With reference to the answer you have just given, is it not applicable to almost the whole of Ireland that except as to this special class of cases, there is a great absence of ordinary crime?
Great absence, I should say, in all the parts I am acquainted with.

1670. So that what jurors have particularly to do is to try these special cases in which their prejudices, their feelings, or their sympathies are very much engaged?
That is exactly what I wish to convey.

1671. And therefore it renders any amendment of the jury law much more difficult than it would be under normal circumstances?
Certainly.

1672. You spoke, in the first instance, of the present state of Limerick, Clare, and Kerry?
As to Clare and Kerry, I merely speak from hearsay, knowing that they stand very much on the same footing; at least I have heard so.

1673. You go on circuit, probably?
I do not go to Clare.

1674. Would you class them together absolutely?
I should say so.

1675. You said that in Limerick, especially, it was almost impossible to secure verdicts where public feeling is excited?
Yes.

1676. You said that the causes were sympathy, intimidation, and a general feeling of opposition to the law which they were called upon to administer; now would you class, also, amongst those causes, general ignorance and want of intelligence on the part of the jurors?
I think so.

1677. Do you think that they are improving at all in that respect; I mean leaving intimidation and other causes of that out of the question?
I have not seen much reason to think so. I think at the present moment, and for some time past, indeed, there is and has been that general feeling of opposition to the law that the very mention, in fact, that you prosecute for the Crown is quite sufficient to excite a feeling in the jury box; instead of sympathising with the law they rather sympathise with the offences against the law that have to be prosecuted. And I must say I think the people are very moderate; considering the almost practical impunity there would be for serious offences, I think it wonderful how few offences are really committed; that is, the few offences of the ordinary type, such as you would have in other countries.

1678. In fact almost all the crime in the country springs out of some temporary excitement of one kind or the other?
We have practically nothing else but subjects connected with land.

1679. It happens at this moment to be a class of what are called agrarian offences that cause the excitement, is it not?
Agrarian offences.

1680. In Limerick, I believe, you had before great many agrarian offences, what are called faction fights, had you not?
Yes.

1681. Which are not ordinary crime?
No.

1682. They are like the clan fights in Scotland?
Yes, and assaults in which respectable farmers' sons are almost always concerned;

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cerned; and then you have to try those cases with farmers who more or less sympathise with them; and if they do not sympathise with them they do not like to give verdicts against their neighbours. That is really the practical outcome.

1683. Does it not appear to you that all these difficulties in the way of making any real amendment to the jury system point very strongly to a question which, I think, the Chairman asked you just now with reference to increasing the summary jurisdiction of magistrates?

I think if there was no other consideration against it, and perhaps the one I have thrown out is entirely illusory, it might be desirable to do it.

1684. Might not that summary jurisdiction, under certain circumstances of the country, or within certain districts, instead of being entrusted to the local magistracy, and bringing them, as you say, into an invidious position, be given to magistrates appointed for the purpose?

That is resident magistrates?

1685. Magistrates specially appointed?

I think that might perhaps be a good plan.

1686. Would you approve of a system of that kind; would that fall in with your views?

Perhaps so; I must beg Lord Inchiquin's pardon; when I adverted recently to Clare I should have remembered that he is much more familiar with Clare than I can possibly be.

1687. Lord *Inchiquin.*] I am very glad to hear what the witness thinks:

I have no direct opportunity of testifying to Clare.

1688. With regard to increasing the qualification, you said just now that you thought there would be a difficulty in doing so on account of the difficulty of getting sufficient men to form a panel?

Yes.

1689. But it was suggested that it could be easily done, so that jurors would not have to attend more than once a year instead of once in two years?

Yes.

1690. Do you think that to attend once a year would be a great hardship upon a jury?

My opinion, perhaps, is not worth much; but I really think it would be, considering that jurors would have to bear the expense that journeys and absence from home would entail upon them by attending once a year.

1691. It is principally the longer distances which they have to come which entails the expense, is it not?

Yes, and there is the expense in town also of absence from their homes, and so on.

1692. Very often when they do go they are challenged and told to stand aside and are not required at all; is not that so?

That, of course, naturally follows with the power the Crown has (when I say the Crown I mean those representing the Crown) to order them to stand aside.

1693. If the number of challenges were reduced, which the prisoner has the right to make, that would somewhat obviate the difficulty, would it not?

The prisoner has the power to challenge 20 in cases of felony and six in misdemeanour.

1694. We have had all that before. I wanted to know whether you thought the right of challenge of the prisoner being reduced, it would be an advisable thing to reduce it considerably; might not that make some difference?

I should be sorry to recommend any change of that sort; at least it is hardly within my province to do so.

1695. Before this agitation began, I think you say you thought that the jury system was still unsatisfactory?

Yes, in that county to which I specially alluded.

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1696. And also generally in Munster?
Generally in Munster, by hearsay.

1697. There being this state of things, it comes practically to impunity for crime?
In a particular class of crime.

1698. The mere raising of the qualification will not of itself increase the chance of crime being punished; what therefore do you suggest; do you make any suggestion?
There comes the difficulty as to whether it is right for one who administers the law to suggest material changes in it. It may point, for instance, to whether one could go back now to a limited power of selection in the sheriff, such as was, I think, recommended so long back as 1856 by Sir John Young's Bill.

1699. Do you think it would be advisable to return to a discretion on the part of the sheriff in summoning jurors?
I think probably the utmost that could be done would be this, that he should still follow the present arrangement, the precept going, "having regard to the fitness and competence of the jurors," and accompany that with an affidavit or with a statement in open court upon oath by the sheriff and undersheriff that they have exercised that limited discretion, if I may so call it, fairly and impartially, having regard to the interests of justice. That is the utmost I should recommend now.

1700. Not that the sheriff should give reasons for not summoning certain jurors?
I think you could hardly do that; if you trust at all you must trust public officers to some extent.

1701. One or two of the witnesses suggested that there should be a commission appointed to try special cases, and that the Attorney General should have the power of pointing out what cases he thought it would be unadvisable should be tried by a jury, and that those cases should be tried by a commission of two or three judges; what do you say to that?
That I think is a matter more of policy than a matter for me to give an opinion upon.

1702. You have not formed any opinion upon that point?
Well, practically speaking, I do not think any injustice would be likely to be done; but this I merely give as an opinion, and not a recommendation. I think a commission of judges would insure in every case a perfectly fair trial.

1703. You said just now you thought that summary jurisdiction might be increased; in other words the summary jurisdiction of the magistrates, as I understand it, before the ordinary petty sessions tribunal should be increased?
Yes.

1704. Do you not think it would be much more satisfactory that these cases that there is so much difficulty in getting a conviction in now, should be tried before judges rather than before, we will say, even resident magistrates?
Unquestionably. But my former answer pointed to a much smaller class of cases, where, will we say, "forcible possession" was taken under the circumstances I have mentioned.

1705. You did not allude to these agrarian cases?
Not to important agrarian cases, or the higher class of crime, which arises occasionally; we will say capital cases. As to instituting a comparison between a commission of judges and magistrates of any description, I should not think of doing it.

1706. What I meant was, if such an increase of jurisdiction were given to the magistrates, still you would require some other tribunal or some alteration that would ensure conviction for crime in serious cases, and such cases as come before the quarter sessions and the assizes?
Yes; that is in serious cases where the case is clearly proved.

1707. But

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1707. But it is so notorious that the present state of things is unsatisfactory, that there is practically impunity for the commission of crime, and something ought to be done in order to insure generally that it will be diminished?
Yes; to insure conviction on the part of people that justice will follow crime when clearly proved.

1708. In that case if you cannot do it through the jury surely the best way is that there should be some commission of judges appointed it seems to me?
I merely wished to draw the line that I think that is a matter of policy on which I ought not properly to express my opinion.

1709. Does it occur to you that anything short of that could be done?
It does not occur to me that anything short of that would be effectual under present circumstances; I see no intermediate course during the present agitation, if I am to consider only how convictions are to be secured in clear cases of serious crime.

1710. Lord *Emly.*] You spoke of the difficulties that you had in the county of Limerick before the present agitation caused by the faction fights?
Yes.

1711. That, I think, applies to a very small part of the county, does it not?
Yes.

1712. In the rest of the county of Limerick, before the present agitation, were there many cases that came to your knowledge in which the juries did not perform their duty?
I think, generally speaking, they did not. Whenever there was what I have called a disturbing element, that is either in a case of bad assaults by farmers' sons, or riots, or cases of that sort, getting a conviction in the clearest case was very precarious; and if there was not an acquittal, there was almost always a disagreement. In fact, one was aware beforehand that there was very little chance of getting a conviction.

1713. You spoke about the intimidation of jurors. Of course there must have been cases that have come to your knowledge in which the jurors did their duty; can you mention any case in which any juror has suffered on account of his having conscientiously performed his duty?
I think I recollect a case of that sort, though I cannot at the present moment specify it. With regard to these matters, after all you can only give an opinion from what is called the notoriety of the subject; I may mention one case which occurred at the last winter assizes, held in Cork for the whole of the Munster circuit. I prosecuted there. The criminal business of the four counties (that is a portion of it) is sent to a particular venue to be tried; and there we observed last winter the greatest unwillingness upon the part of jurors, even of the city of Cork, to come in and answer to their names; and there was no doubt upon any of our minds, I think, that there was great intimidation practised on that occasion. In one case, where there was a disagreement, a juror complained to the judge the next day of the manner in which he had been treated; he made a long speech; he came forward to specify what had occurred; he said that he was one of the jurors, or the juror, I forget which, who disagreed, and that the moment he left the box, and as he walked through the town, he was pointed at by everybody almost, as the juror who had disagreed. He appealed to the judge whether that sort of conduct was a proper sequel to a juror discharging his duty upon his oath in the jury box. That is one case. As to the others, it comes to what I say, and I can only give an opinion, which may be quite fallacious.

1714. As I understand, Limerick is the only place in which you are the ordinary Crown prosecutor?
Yes.

1715. You prosecuted in Cork at the winter assizes?
Yes.

1716. Did the jurors there perform their duties satisfactorily?
They did not, even in the city of Cork, upon that occasion where there are

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the best juries usually in the south of Ireland. But at that particular crisis the operations of what is called the Land League were rife throughout the country, and we observed a marked falling off in every possible way in the conduct of jurors. There was a difficulty in obtaining verdicts in the very clearest cases, which was commented also upon by the judge who presided. It is not my opinion merely. Of course the opinion of the Crown prosecutor may have a bias one way or the other. I believe it to be the opinion of the bench, who are above all suspicion of partiality.

1717. Then in the present state of things you think no alteration in the law would insure the obtaining of jurors who would discharge their duties properly?

I really do not think that at this critical period (though how long it will last I cannot say) any amendment of the Jury Act, by infusion or otherwise of others, besides farmers, would very much improve the chance of properly administering the criminal law. I do not think you have the materials in the country.

1718. Lord *Penzance*] What part of Ireland do you speak of besides Limerick and this particular occasion when you were prosecuting at Cork?

I only speak of my acquaintance as a Crown prosecutor of 20 years' standing with Limerick, and upon this recent occasion having prosecuted for the four counties of the Munster assizes at Cork, at what is called the winter assizes.

1719. That is four, I take it?

Clare, Limerick, Kerry, and the county and city of Cork.

1720. Had you ever prosecuted in Cork before, so as to observe the behaviour of a Cork jury?

I had prosecuted in a few cases specially taken there, but I cannot pronounce upon that subject with any degree of accuracy. There are others who are able to give much more important evidence as to that.

1721. Then the result of your opinion, as to what passed under your eye at Limerick and Cork at the winter assizes, is that the jury system in cases of the character to which you have alluded, breaks down?

Yes.

1722. And that not by reason, as I understand, of want of sufficient capacity, but by reason of what you call a disturbing element?

I would also add, I think, in Limerick that there has been a great want of capacity and intelligence. It has been frequently observed and frequently commented upon Let me add also that with regard to the farming class as a rule, and more particularly in a pastoral country where they are not of the same degree of intelligence as in the midland counties of Ireland, I think there is a great want of intelligence upon the part of many of the rated occupiers in Limerick.

1723. Mr. Justice Barry was good enough to point out to us in his evidence that what he had experienced was that in cases that depended, not upon direct testimony, but upon drawing a reasonable inference from facts and what we call circumstantial evidence, that the juries were not really capable of doing it; is that your opinion?

That is what I mean to convey that they are incapable of following trains of reasoning, or able to connect circumstantial evidence.

1724. Then, in addition to that, there is a strong feeling on the part of the farmers in all these agrarian cases?

Certainly; it is not in fact I should say that they are deficient in intelligence so much as in educated intelligence.

1725. The power of reasoning and drawing correct conclusions from a conglomeration of facts or connected general reasoning, you mean?

Yes. Whether it may not improve with time, I cannot say.

1726. Have you noticed any improvement?

At one or two assizes we rather congratulated ourselves that there was an improvement afterwards. But then came the present state of the country which renders

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renders any system of trial by jury in the country, with any certainty, out of the question.

1727. As to the possibility of improving the jury, is it a fact, as far as your experience goes, that the prisoners make use of their power of challenge to exclude the more educated men from the jury?
Undoubtedly.

1728. They do, you think?
Yes, undoubtedly.

1729. Is that universal?
As regards my experience, let me say with regard to the quarter sessions in Kilkenny, where I find matters going on satisfactorily, there is very seldom a challenge, and very seldom a juror ordered to stand aside, and they do their duty very satisfactorily upon the whole in ordinary cases.

1730. There the educated men are retained on the jury?
Yes, I do not find any challenges.

1731. But in the assizes cases it is not so?
In the assizes cases they are regularly challenged in every case by the prisoners, and as regularly (let me say necessarily, I think) told to stand aside, where the jurors are supposed to have external influences at work amongst them.

1732. I am speaking of the more educated classes, such as justices of the peace, and gentlemen, and so on; is it the system for the prisoner to challenge them?
At once he does so.

1733. That removes them from the jury?
Clearly.

1734. The list I have before me is rather a favourable one as regards the number of better class people; there are in this list, or rather in the one put in, 13, I think, out of 171?
That is in Kilkenny.

1735. That is about one man in 13?
Yes, that I stated was more favourable.

1736. There being only that small admixture of educated men, if there is a right of 20 challenges, and the tendency of the prisoner is to strike off the educated men, it would entirely eliminate the educated element, would it not?
That is almost a necessary inference.

1737. Is there any method that occurs to you by which you could prevent that, supposing the peremptory challenges remain?
None whatever.

1738. The raising of the qualification of the jurors would not, of course, bring more educated men on to the jury, but simply exclude a number of less educated men?
That is the difficulty I felt to the raising of the qualification.

1739. Therefore, if that were done, it would still leave the educated portion in a very small minority?
It must.

1740. And so small that the prisoner, with his power of challenge, could exclude it altogether; is that so?
It is. Beyond that I wish to convey that the materials that exist in Ireland do not enable you to get, after exhausting the challenges by the prisoner, a very educated or a very intelligent jury.

1741. Suppose that it did, and suppose you got a jury of educated men, might there not be some feeling about all these men who are trying the case; a feeling on the part of the men who are tried and who belong to the peasant or

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the small farmer class, that they were being tried by a class of men not their own; would not that be a ground of complaint?

That is also, I think, what I said; it is a choice of difficulties.

1742. The system that exists in this country is founded upon the supposition that a man is to be tried by his neighbours, is it not?

Yes. Of course I give that answer with this qualification, that if there is a choice of difficulties, still the first point is to secure the proper administration of justice.

1743. Now let us turn to another view of the matter, the change of venue. You have already said, I think, that you think it is desirable that the judge should have power to change the venue, and you would not limit that at all, as to where he should change it to?

No, I think if you are to depart from the law as it stands at present, it would be a very safe departure to trust a judge of the superior court in a proper case, with the power to direct where it should be tried.

1744. So that a man who committed an offence in Kerry might be tried by a jury at Belfast?

Yes, that is putting an extreme case.

1745. I am putting an extreme case?

And if it was a sufficiently important case; but that is subject to the judge's discretion; and I have great confidence in them.

1746. Has it occurred to you that it might be said, in regard to the prisoner, that you are putting him to the enormous expense, and perhaps almost the impossibility, of getting his witnesses from one end of Ireland to the other?

I would add, with reference to that, that the practice has been in all the prosecutions in Ireland, invariably, where the venue is changed, for instance, at the winter assizes, where it is changed to Cork, to pay the expenses of the prisoner's witnesses; he is asked to furnish a list of his witnesses, and the public prosecutor always pays them.

1747. That would remove that objection then?

It would. So scrupulously fair is the administration of criminal justice in Ireland that that is done.

1748. Therefore he would be placed at no disadvantage?

He would be placed at no disadvantage: at least if the same system is followed as now prevails at the winter assizes, where a circuit is consolidated in the one town.

1749. The only alteration you would make in the existing law is, that instead of that power of changing the venue residing only in the Queen's Bench, it should be conferred on the judges of assize?

Yes, or on any single judge.

1750. Any single judge of the superior court, you mean?

Yes.

1751. With regard to another suggestion, that of increasing the summary jurisdiction; you would, I understand you to say, put a considerable limit upon the sort of cases that should be subjected to summary jurisdiction?

I would put a very considerable limit.

1752. Can you give the Committee any idea of the line you would draw?

No, my mind has never been directed to that.

1753. You would, speaking generally, increase the summary jurisdiction for minor offences?

For minor offences. I should be very anxious not to put the local magistracy into antagonism with the people more than was absolutely necessary. Of course these are all questions of difficulty in reference to this country.

The Witness is directed to withdraw.

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The Right Honourable Mr. Justice BARRY, is re-called; and Examined, as follows:

1754. Lord *Emly*] I think you wish to add something to what you stated the other day, in order to clear up some points in your evidence. Are we to understand that in the evidence which you have given, you mean to attribute the miscarriage of justice in Limerick altogether to want of intelligence on the part of the jurors?

Certainly not, altogether; but, in my opinion, mainly. I speak altogether from the result of my own personal observation; I may be wrong, but I think a presiding judge has a peculiar opportunity of forming an opinion of the mental capacity of the jurors who are empannelled before him. The advocates, the parties interested, have their own particular views to promote. The judge approaches the matter with a mind perfectly unbiassed and undisturbed. His only duty is to guide the jury to a just verdict, and I think it the duty of a judge; at all events, I always myself in practice deem it my duty, to closely observe the men through whom that conclusion is to be arrived at; and the result of my observation in Limerick has been to lead me to the conclusion that the failures of justice which manifest themselves, especially in disagreements, are to be attributed mainly, though not altogether, to defective education and intelligence. Of course there are other causes co-operating. In fact, I would divide, in a rough and general way, the jurors to whom I attribute these miscarriages into three classes; first, men who honestly desiring and honestly endeavouring to discharge their duty are unable to do so from want of capacity, either arising from defective education or intelligence, to estimate the force of the evidence given before them; secondly, a class of men who, from want of education and intelligence, entertain no sense of duty or responsibility, and who think that the readiest and simplest mode of escaping difficulty is to acquit the prisoner, and think there is no harm in doing so; and the third class is the class of men (and they undoubtedly do exist) who, with perfect capacity to understand the evidence, come into the box perfectly determined that they will bring in a verdict of acquittal, whatever the evidence may be.

1755. Are we to understand your evidence to apply generally to the ordinary working of the jury system in ordinary times, and not to the present excited state of the times?

I confine my evidence altogether to the general working of the jury system in ordinary times. In cases of great disturbance of the public mind, it is very difficult even for the most sanguine admirer of the jury system (and I am a most enthusiastic admirer of the jury system, and hope I shall never see it abolished or interfered with in the country) to say that it is not open to some objection. At such a time it is quite impossible to conceive a jury system, either in England, Ireland, or Scotland, which may not be open to great difficulty and apprehension.

1756. Those are the only points you mentioned to me; is there any other remark you wish to make?

I thought that I conveyed the same views before, but I was not quite certain from some observations that were made, whether I had done so or not.

The Witness is directed to withdraw.

Mr. ARTHUR HAMILL, is called in; and Examined, as follows.

1757. *Chairman.*] I believe you are Chairman of the County of Roscommon? Yes.

1758. You have had considerable experience as a barrister, I believe?

Yes; I was a practising barrister from 1854 till 1879, and my circuit was the north-east circuit. It comprised the counties of Louth, Monaghan, Armagh, Down, and Antrim.

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1759. I think you gave evidence in the House of Commons on this subject?
I did, in 1873 or 1874, I forget the exact date.

1760. You then expressed a pretty decided approval of the changes made in the law by Lord O'Hagan's Act of 1871, did you not?
I did, very strongly; and I still hold to those opinions.

1761. Has the alteration of the jurors' qualification, which was made, I think, first temporarily in 1873, and then permanently in 1876, induced any considerable change in the class of jurors?
I should divide my observations into two parts; speaking first, as a barrister, and secondly, as a chairman, or county judge. During my time upon circuit, I thought the verdicts of juries satisfactory upon the north-east circuit; and I wish to confine what I say to that circuit, and also to Dublin, where I also practised.

1762. Lord *Emly.*] What time does your experience cover?
I understood the question of the noble Lord referred to the period from the passing of Lord O'Hagan's Act up to 1879, when I ceased to practice.

1763. *Chairman.*] And does your experience lead you to believe that, as a general rule, the conduct of the juries is such as to inspire the public with confidence as to the way in which their duties would be discharged?
You must except the popular agitation of the present time; and, putting that aside, I think it ought to do so, and that it has, as far as I know. Of course, I do not speak of southern counties, of which I know nothing.

1764. But speaking of the counties with which you are familiar, you would admit that since the occurrence of the recent excitement, there is some reason to question whether the jurors are satisfactory?
Yes, I would be disposed to say so.

1765. Would you say that of all classes, or only a particular class of cases?
Only the particular class of cases connected with agrarian agitation.

1766. That class of cases which was described in your presence by a previous witness, as cases into which a disturbing element entered?
Yes, into which a disturbing element has penetrated.

1767. And is that because the class of men whom you usually find in the jury box are closely connected or sympathise with it?
Well, they sympathise; they may not be personally connected, or connected by family relation; but the present agitation touches every man who pays rent to another; and therefore it is a very general and a very disturbing element at this moment.

1768. In the part of Ireland with which you are familiar, are the jurors largely composed of the rent-paying class?
Yes. I may say that there is scarcely a juror at all that is not a rent-paying juror. The rating presupposes that he is rated, and is an occupier; and there are very few indeed of that class who hold fee-simple lands.

1769. Could you give us any illustration as to the proportion of numbers of the farming class which you would find in a given number of names on the jury list?
I cannot exactly do that, because the county of Roscommon has one or two towns, not very large, but still they are trading towns, and there is an element of shopkeepers always on my juries from those towns. I therefore should say that the shopkeeping interest as represented upon the jury, would be one-third of the entire number in the county of Roscommon. There is the town of Roscommon itself, the town of Athlone, and the town of Boyle; and there are two other towns, Strokestown and Elphin, which all furnish a certain quota of the jurors.

1770. May we take it, that where there is a miscarriage of justice occasioned by the misconduct of the jury, it is rather due to the general sympathy of the class from which the jurors are drawn with the accused than the conduct of one

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one or two individual jurymen who may have been got at before the case comes on?

I do not know exactly what may be the result at the assizes, where that class of cases to which you allude is more particularly tried. Speaking of the class of cases that come before me, it is generally one or two jurors that may perhaps stand out, and in some cases for reasons perhaps personal to themselves, or from sympathy. I may mention that in the county of Roscommon I have had disagreements in three cases. Two of them are distinctly upon my mind. I have transferred those cases to the assizes, and the result was a conviction in each case. I attributed that to the fact that in the county of Roscommon there are two criminal sessions towns, and by the working of the Act of Parliament the jury has to be drawn from the division or district in which the town is situate. That is rather a narrow area from which to draw jurors. And then we have to eliminate from the jury all special jurors that live in that district, for they are put upon what is called the grand jury of the sessions. And therefore before I get the jury that tries a case before me in one town in a county, where it is divided into two or more criminal divisions, I have first the special jurors taken out of it. I have every magistrate taken out of it, and then I have got the least intelligent before me with whom to try the case.

1771. Then the more educated jurors are in a small minority to begin with and that small minority is rendered smaller still by the circumstances which you describe?

Yes; and speaking upon that point, one of the recommendations that I was prepared to offer to the Committee was (perhaps an innovation upon the constitutional mode of procedure with us in this country) to do away entirely with sessional grand juries, and to let them be cast amongst the ordinary class of jurors in the district. I was also going to offer an opinion that in lieu of their finding a bill, the Attorney General of the day, or some person deputed by him, should direct the indictment. I find in Roscommon 30 of the most intelligent of the jurors, men who are marked special jurors upon the special jurors' book, are summoned before me to form a grand panel at the sessions; 23 of these are sworn. These 30 men, who are the most intelligent of the whole district, are set aside into a room to perform a very ministerial and small duty, and one of little importance; they examine and hear the *ex parte* statement, for instance, that one man has beaten another; and their duty, then, is to find a true bill or no bill, as the case may be. I would wish those men to be placed among the ordinary jury panel. And I say that upon another ground. The Act of 1873 declared that their so serving was not to be considered a service; and the result of that is that very often the same men are brought before me three or four times in a year. The 7th Section of the Act of 1873 says, "Whenever the sheriff or other officer shall select persons to be returned to serve as grand jurors at any general sessions of the peace, or at the sittings of the court of oyer and terminer and general gaol delivery, to be holden at Green-street, Dublin, he shall not initial in any jurors' book the names of the persons so selected to serve as grand jurors as aforesaid, and in preparing any subsequent panel of jurors, such sheriff or officer shall not omit to take the name of any person whom he may have previously thereto selected and summoned to serve as such grand juror as aforesaid on account of his having already summoned such person to serve as such grand juror." The result of that is that the same men are constantly before me, and some of them complain that they have been summoned three and four times before me, and also summoned twice to the assizes.

1772. Lord *Penzance.*] As grand jurors?

Not as grand jurors to the assize. The special jurors go into the general panel for the assize; in the three cases I have already mentioned the evidence appeared, I thought, very plain; the juries disagreed, and I was obliged to discharge them. I felt that there was some influence at work, and I said, "I will transfer these cases to the assizes." Of course I was anxious afterwards to know what became of them, and I found that there were convictions in all the cases; and I attributed that solely to the circumstance that the jurors there were drawn partly from the special jurors' lists, and partly from a larger and more

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more extensive area. Men will get into a fight, and they do not think it is anything very flagrant to be indicted for an assault. They do not look upon it as a crime, such as they would the taking of a man's purse or anything of that kind. There is no young man put into the dock who may not have friends, perhaps, amongst the jurors, who may influence or may have some power to influence others.

1773. Lord *Emly.*] When did those three cases to which you have referred, occur?

They all occurred since Lord O'Hagan's Act.

1774. I mean did they occur during the present agitation?

The last of them occurred, I think, about a year ago; they were not connected with the present land agitation.

1775. *Chairman.*] What I understand from you is that the same men who serve on the grand jury at the sessions will be found on the common juries at assizes?

Yes, they form a component part of the juries, as do also the magistrates who are excluded at the sessions. At sessions they have a right to sit upon the bench with me, and are excluded from being summoned upon any sessional jury list, while they form part of the general panel at the assizes, and should not be omitted because they are magistrates.

1776. You would release those persons from service on the grand jury at quarter sessions?

I would be disposed to do it.

1777. You would get rid of the sessional grand jury altogether?

I would, or an alternative might be to make them a lesser number. In Sligo, where I am also chairman, I find that the number of grand jurors summoned is 35; that is to allow for absence and casualties, and these are men of the highest intelligence. Many of them live in towns, and would be the fittest persons, in my opinion, to try cases, and decide upon the innocence or guilt of the party accused.

1778. Lord *Penzance.*] Thirty-five are summoned, and only 23 sworn?

That is all; but they are summoned, and they are excluded by Section 19 from being upon my jury list.

1779. *Chairman.*] In short, your object generally is to get into the panels more numerous representatives of that better educated and more intelligent class of jurors?

Yes, the more intelligent and better educated class I would desire to see in the jury box; and for that reason I thought there might be a beneficial alteration in the qualification of jurors generally by somewhat raising the standard. I observe that the Jury Acts have different standards for different counties, and I think that in a careful revision there might be an alteration made that would beneficially affect the objects of the Jury Acts. Since I received the summons to come here, I have made inquiry both in Roscommon and in Sligo, and I have ascertained that the number of jurors under the old system of selection, prior to the Act of 1871, did not exceed in number more than 200 in a medium county. Perhaps there might be a larger number in counties like Cork, Antrim, Down, or Tyrone; but speaking of a medium county, they did not exceed much more than 200 or from that to 300 persons. The Act of 1871 increased the number of jurors in the county of Roscommon very largely; and then there came the Act of 1876 raising the qualification, and the result of that was that the number of jurors that we have now in the county of Roscommon is 562; and if 200 persons, or say 300 persons, were all that the sheriff had to select from prior to 1871, it does occur to me that, with these 562, some might be subtracted, and still leave quite sufficient to do the county work.

1780. We have had a great deal of evidence pointing to the conclusion that, prior to 1871, the number of persons legally qualified was so small that virtually there was no sufficient supply of jurors?

That

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That makes my observation still stronger, because I understood there were 200, and 200 would be quite sufficient to do the work of the county, but that would be by calling upon the same men very often. I should suppose that if there were 400 or 500 really efficient working men in the county of Roscommon, they ought to do the work of that county very well. I find they have 481 jurors in the county of Sligo on the jury books. I have there but one criminal town; it is the capital town where the assizes are held; in other words, there are six criminal courts held in the year in the county of Sligo, whereas I have 10 in the county of Roscommon, because there is a division between the north and the south of that county for criminal sessions.

1781. We have had a great deal of evidence showing that the superior class of jurors are not very fond of taking their share of service with their humbler colleagues; is that your experience?

I cannot answer that, because that could only arise at the assizes where I am not; I can only say this, that I was one of those who very strongly advocated the present mode of service of jurors when I was here before, and that was to take it entirely from the influence of the sheriff, and to transfer it to the constabulary; the result of that has been, as far as my experience goes, most satisfactory. Every summons is served, or if it be not served, a reason is given why; and I find the attendance of the jurors at my sessions very good. It is scarcely once at a session, or perhaps twice in the year, that I have to record a fine, and I do not think, if the jurors were properly summoned, that they would refuse to do their duty at assizes or anywhere else.

1782. Is the fine generally enforced?

It is enforced unless the party gives some very good and satisfactory reason. The usual mode is that when a police constable proves the service the fine is recorded; then the party is called upon to pay the fine, and he generally does pay it, and then he memorialises me at my next sitting, setting forth the grounds on which he seeks to be exonerated. I listen to what he has to say, and if it be just I remit the fine. At my very last sessions there was a man fined; he was a shopkeeper, or a merchant as it is termed, that is, he had various commodities to sell; he lived in the town of Athlone. The summons styled him a farmer, and he told the police he would not attend because it must have been intended for some other person of his name. However, the question of his being a farmer or merchant did not arise before me, and I had to record the fine. Instead of coming to explain the matter to me he memorialised the Lord Lieutenant, and the Lord Lieutenant, after considering the case, and finding, I suppose, that the man had been served personally, refused to remit the fine. I cannot say that I have ever seen any want of attendance or want of desire to attend except in very rare instances.

1783. I think you have a suggestion to make with regard to the schedule of exemptions appended to the Act of 1876?

Yes: I find in the schedule to the Act of 1876 that the Act exempts all persons who are paid out of taxes or by local authority; I think that is going too far. I find that under this clause there are about a dozen men in the county of Roscommon, and an equal number, I think, in the county of Sligo, who are called baronial cess collectors, sometimes they are half baronial cess collectors, and sometimes they are collectors for an entire barony, but they number somewhere about 12 in each county. These men are about the most intelligent men of the whole community; in fact, they would not be fit for the duties of their office if they were not. They take shelter under this expression: "Persons holding any public office under Her Majesty's Government, or any public department, *or under any local authority and paid from taxes, general or local.*" They say because they are paid a poundage upon what they collect, they are exempt and the exemption has hitherto been allowed to them. Then there is another, exception as to civil engineers, and I cannot see exactly why they should be exempted.

1784. Lord *Penzance.*] And architects?

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The word is not here, but I suppose they would come under the same term as civil engineers, and I do not see why they should be exempt. Then the Act itself makes use of this term: "Persons who are bank managers"; they are to serve, but one or two of the banks do not style their officers in country towns "managers," they call them "bank agents," and under the term "bank agents" they seek exemption. Now these bank managers or bank agents are men of education and intelligence, and I really think that they ought not to be exempted. Still, on the other hand, if I had permission to do so, I would say this: "there is here an exemption of all persons selling intoxicating liquors by retail to be consumed on the premises where such premises shall be rated at a net annual value of less than 15 *l.* a year." I would be greatly disposed to increase that to 25 *l.*; that is where persons live only by the sale of drink, I would put a 25 *l.* rating qualification, and exclude the others, because when they go beyond that, it may be possible that they have other means. They may have a farm or they may have some other business; they generally associate with the retail sale of drink, the retail of teas, sugar, hardware, and various things of that kind. I would be disposed to extend the exemption to the extent of exempting a man who was only rated under 25 *l.* and who sold drink.

1785. You mean you would take the low class publicans off the list?
Yes, I would disqualify a man rated under 25 *l.*

1786. I think your earlier answers rather pointed to the conclusion that it was impossible under present circumstances, in some parts of Ireland, to have very much confidence in the conduct of a common jury in some cases?
That is only what I hear. I cannot give any opinion myself about that. I have already stated that I do not know anything about those counties that are so agitated as the southern counties are.

1787. As far as your own experience goes, you have no knowledge of that?
No. I think, however, a very good jury could be got if the Crown solicitor, using his own intelligence, and assisted by the officers of the particular county, would desire jurors who are known to be disaffected or too strongly tainted with prejudice to "stand by"; and that I believe has been done with very great success in the county of Leitrim at the very last assizes for that county. Leitrim had the repute of being a disturbed county, but I cannot speak personally of it. I understood that the learned judge who presided there was quite satisfied with the mode in which the juries had discharged their duties in that county, but the Crown solicitor did exercise his power very largely; and I believe it was made the subject of a question in the House of Commons.

1788. He has an unlimited power of ordering jurors to stand by, has he not?
He has unlimited power with a certain qualification. The prisoner has a right of challenge, according to the nature of his offence; for treason he has 35 challenges; for felony 20; and for misdemeanour six. The Crown has an unlimited right of desiring a juror to stand by, but if the panel is not made up, then those whom he told to stand by must again be recalled, and he has no second power to tell them to stand by, but must assign cause why they should stand by. As a rule, where they sometimes summon a hundred or 150, and perhaps more jurors to a county assize, it very seldom happens that the jurors told to stand by are recalled, or have their case reconsidered.

1789. *Lord Privy Seal.*] You said, "if the panel is not made up"; you meant the jury, did you not?
Yes, I meant a panel of the jury; twelve in number.

1790. *Chairman.*] That, in your opinion, is a sufficient remedy, where there is reason to suppose that many of the jurors are determined not to do their duty?
I do not say it would be a sufficient remedy, but it would go a very great way. I would say this, the Court of Queen's Bench has a very large power to transfer the venue from one county to another for the trial of a criminal case. We have at this moment the trial, going on in Dublin, of the Phelans, for the murder of Mr. Boyd. That court has the power to change the venue in a proper case, and

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and upon a proper ground of application; and I think by the exercise of the power of the Crown solicitor fairly, and also by applying to the Court of Queen's Bench, a proper venue could be found in 19 cases out of 20, if not in every case.

1791. Do you think it necessary that application should be made to the Court of Queen's Bench?

I do, and I will say why, though I may be wrong about this. It should not be made to a single judge during the time of the assizes; I do not think that is the proper time or place for making the application; I think it should be made in term, when the full bench is sitting. The court is then composed of all the judges of the court, and I think it is perhaps a case which a single judge might feel a very great reluctance to enter upon by himself.

1792. Would he not be able to judge whether the state of the country was such as to make it obvious that trial by jury in the particular case before him would break down?

If your Lordship means by his own personal observation, I think not; because a judge, unless he lives in the county or is mixed up with the county, cannot have very much personal observation any more than any other individual. His decision must be grounded upon what appears before him in public court. It must not be a matter of mere personal observation of his own, but must be grounded upon an application sworn to, and, if necessary, facts must be referred to that give force to the application. I have never known a change of venue without affidavits having been made and considered, and counter-affidavits having been made and considered, and then it is after all that that the judges have to decide.

1793. Suppose the district happened to be one which at the time was a proclaimed district, and therefore admittedly in a state of considerable agitation, and in a given case such affidavits as you describe were put in, would not the single judge be equal to the responsibility of deciding?

The single judge then would be called upon to do this: to adjourn the trial of that particular case, as was done indeed in the present case of Mr. Boyd; the application as to where the venue is to be changed to, is a different thing, because the county is to be chosen where the trial will be had.

1794. Lord *Penzance.*] Then you would have the single judge adjourn the case in order to give time for application to the Queen's Bench?

Yes, that is the ordinary course.

1795. *Chairman.*] That is the present course, that the judge adjourns the case?

Yes.

1796. Then an application is made to the Court of Queen's Bench?

Yes, that is the course that has been adopted in the case I have referred to; and I think I can remember a similar case before.

1797. Would you make the same remarks as applicable to a case where there had been a disagreement of the jury?

That would depend very much upon the element in the jury box, and upon what the judge who had tried the case might himself have observed.

1798. Lord *Penzance.*] He might be almost a better judge of that state of things than the Court of Queen's Bench?

He would at that moment. I had the advantage of hearing the learned judge, who has been examined here (Judge Barry), speaking upon that subject a while ago, and he said from his own personal experience, he did observe the manner and demeanour of the jurors. Any judge trying a case must do that. You must have your eye upon them, at all events when you are addressing them, and stating to them what the evidence has been that has appeared before you.

1799. Lord *Monck.*] Is there any technical legal difficulty in applying for a

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change of venue in the case of a man tried, as compared with a man who has never been tried?

I do not think there is; it comes in the same way. It was intimated by one of your Lordships that every man has a right to be tried by his peers, and in the venue or county in which he lives; it must be something extraordinarily strong that takes a case out of that category, and grounds must be laid for the application.

1800. There really would be no great gain in point of time by allowing a single judge at the assizes to make an order for a change of venue, because all the preparatory proceedings would have to be gone through in either case?

In point of fact, there would be none. Just let me suppose a case for one moment. I will take the case of the county of Sligo and the county of Roscommon. The judges on the Connaught circuit enter Leitrim, say, on Monday; they spend three days in that county; they enter Sligo on the fourth day, and they spend three days in that county, and then they go on to Roscommon, and they spend three days there. Now, suppose a question arose when they went into Leitrim as to where they should adjourn a particular case to. The arrangements were made for the entire of that circuit before it commenced. They might, of course, send it to the last town upon the circuit, but then the prisoner may be perfectly innocent, and there might be a feeling of prejudice against him, in that particular town, and he has a right to be heard, and would be, of course, heard upon counter affidavits, as to postponing the trial, as was done at Waterford, where the application was very properly made to have the trial transferred. I may mention that in the county of Sligo the same thing has occurred, but I do not know exactly where the men are to be tried. A process-server of my court was going to serve processes, and a number of police were told off to attend upon him. He was passing along the road, and fell in with four policemen who were on their route to join the larger body, and there that unfortunate conflict took place in which one policeman was beaten to death upon the road and another was beaten, though not to death, for he has recovered, though he never will be the same man again that he was before. The two young policemen, in defence of the process server and themselves, shot down two of the people. That was in the county of Sligo, and, properly speaking, the trial should take place there; but an application has been made to the Court of Queen's Bench, and the trial is removed from that county, but whether I have not heard. I say the application generally is twofold; first, that it shall be transferred, and then afterwards there is another application as to where it shall be transferred to.

1801. *Chairman.*] You heard some answers that were given just now, by a previous witness, with regard to the possibility or the advisability of in some cases extending the summary jurisdiction of the magistrates; have you formed any opinion upon that point?

Yes, I have. I think that a very extended and a very beneficial jurisdiction might be given to magistrates, but with some qualifications. In the first place, I would not give it to local magistrates alone; I would rather keep the local magistrates out of consideration in what I am going now to offer. I would have the magistrates' court composed of two stipendiary or resident magistrates, and I would give them a very large jurisdiction in everything connected with the present agitation about land, or about the humble officers of the court who have to execute the process of the law. I would extend the summary jurisdiction to all cases of intimidation, whether it was by blowing of horns, by beating of drums, or by any other means: I believe they rattle tin cans in some cases, and anything at all they can get in order to excite and call the people together; and sometimes they come armed with spades or shovels. In all this class of cases, where from the manner and demeanour of the people, a man of reasonably fair courage was deterred from doing his duty, I would give the magistrates the power of summary conviction. That is a class of cases of all others in which a jury is slow to find a verdict of conviction.

1802. Are

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1802. Are those cases which under the existing law cannot be dealt with by a jury?

A jury could deal with them if they would; a magistrate cannot, except in this way; he may get the parties bound over to keep the peace, that is for good behaviour for the future, but not inflict punishment for the crime that has been committed. There is a standing order, or I will not say a standing order, but there is an order very often when this class of cases comes before me to transfer them on to the assizes, for the very object of getting a superior judge to try them, and also to get a superior jury for the same purpose. In the last sessions at Boyle this kind of case came before me. A woman was bound to appear to take her trial for pasting up a placard prohibiting the country people from dealing with a certain person by name, because he had refused to join what was called the Local Land League. It appeared to me to be a very simple case, and I thought that magistrates dealing with it quickly would have been more efficacious than sending it before me, and then having it transferred to the assizes; for I think a speedy conviction with a very small punishment more beneficial than a deferred conviction with a greater amount of punishment.

1803 What you want is certainty in the administration of justice, rather than great severity?

Yes. I want certainty, and I would put the exercise of this jurisdiction on the resident magistrates; but I would also add this qualification; as at present, in certain larceny cases, the magistrates would not have the power of conviction, but only at the option of the parties accused.

1804. That is the resident magistrate sitting alone?

Yes, either alone or with others; in larceny cases magistrates cannot convict without first asking the accused. "Are you willing to be tried by this tribunal?" That is the formula; and if the party says "Yes," the case is heard and decided offhand. In the case of minor agrarian offences, I would let the magistrates dispose of them; but if they were more serious, I would then not allow magistrates to dispose of them without the accused having the power to say, "I wish to be tried by you," or "send me on for trial," before the authorised tribunal, whether it be the sessions or the assizes. I would say also, if there were a question of title to property, or of title to land, to be considered, or if there were a punishment, exceeding 20*s.* fine, or one month's imprisonment, I would give the accused a right of appeal, and would be inclined then not to give the right of appeal to the chairman or his brother magistrates, but direct to the judge at the assizes. If two or three gentlemen sitting as magistrates impose a fine or punishment, the party appeals; it comes back, not exactly to the same gentlemen, for there is a clause, and a very proper clause, in an Act passed about four years ago, that the same gentlemen are not to hear the same case over again; but still, although they may retire from the bench, another local gentleman does not like to go exactly counter to what has been done by his brother local magistrate, and in these peculiar cases to which I have referred, I would be disposed to let the appeal go on to the assizes if the parties choose, and let the judge decide them there.

1805. In those cases which I think you suggested should be disposed of by two resident magistrates, would you allow the alternative to the accused?

I would.

1806. Would it not rather follow that that would neutralise the advantage of the arrangement?

I do not think it would; you will understand that I would give that power only for minor offences; but anything over minor offences, that is, something that would be more serious, I would treat differently. Take, for instance, the sticking up upon the wall of the placard of which I spoke; in such a case as that, or the blowing of a horn, or ringing a bell, or following a man about the town, and saying, "That is the man, Boycott him," I would give the magistrate the power at once to interfere.

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1807. Lord *Penzance.*] Without consent, do you mean?
Yes, I would in those small cases. I say, the more speedily the thing is detected and stopped the more beneficial it is.

1808. *Chairman.*] The point is that in the smaller cases you would give jurisdiction without appeal?
I would.

1809. And without consent?
Yes; but if the punishment went beyond a fine of 20 *s.*, or a month's imprisonment, I would give an appeal. That is our law at present.

1810. Lord *Inchiquin.*] Would you exclude the local magistrates altogether?
I would not exclude them, but would give the power to two resident magistrates; I would not exclude the others if they choose to sit.

1811. *Chairman.*] The resident magistrate, now sitting alone, has an extended local jurisdiction, has he not?
He has; he has a very large power.

1812. And commands considerable confidence, I believe, as a rule?
As a rule, I believe, they do. If you gave this power to local magistrates, you might provide that one should be a resident magistrate.

1813. Lord *Emly.*] The county of Roscommon, I think, is one of the counties most pervaded by the Land League, is it not?
It is, very largely. I do not say that it is so active as in Mayo county, or perhaps, as Galway; it was from those two counties that it came into Roscommon.

1814. Is not the Land League as much predominant in Roscommon as in the southern counties?
I believe that the Land League is everywhere; but I do not hear of the failures of justice that I heard spoken of by my predecessor in this chair.

1815. That is exactly what I was coming to. Notwithstanding that the Land League is so powerful in the county of Roscommon, I do not understand from you that there are those failures of justice?
I believe not.

1816. Can you account for that?
I suppose it is that there is more intelligence; and, as I said before, there are four or five small towns that furnish very competent men, shopkeepers and men of that class, who are well qualified to discriminate and consider the effect of evidence.

1817. Then is the urban population in the county of Roscommon larger in proportion to the whole population than it is in the county of Cork or Kerry, do you suppose?
I have never been to Kerry, and know very little of Cork. I have been in the city of Cork, but I have not been in Kerry, and cannot therefore speak of the southern parts of the country.

1818. Have you had many cases before you in which these disturbing elements were likely to arise?
These cases are always transferred to the assizes, and what becomes of them there I really do not know. I have not the same interest in looking after them as I would have in cases that I had transferred myself.

1819. Then I understand you really have no very great experience in that class of cases?
No, I have not, because they go to the assizes, but I say some of them are so small that they might be thoroughly dealt with by the magistrates if the bench were properly constituted. Another matter for consideration might arise: if you are limiting the number of jurors, you might also limit the number of challenges. I would not, in case of life and death, interfere with the right to challenge 20; but I think that in all other cases of felony the challenge might be

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be limited to the number of 10, and that would prevent the more intelligent men being put off on account of their intelligence. I have seen them challenged for that, and for no other reason.

1820. Would you limit the power of the Crown as to the standing by of jurors?

I would not; that is already limited as I have said, in a certain way; when they have exhausted the whole list, they must go back upon them, and cannot tell them to stand by without showing good cause, and then the jury is made up out of their number unless the Crown can show good cause against them. I do not remember in my experience the entire panel being exhausted by the Crown telling a juror to stand by before 12 men were sworn, and I have had a good deal of experience. I have seen a good deal of that in the olden times in connection with the conflicts which occurred upon the anniversary of the 12th of July in the northern counties, and I do not remember it.

1821. I suppose all the cases in which the prisoner still has the right of peremptorily challenging 20 persons, were formerly capital cases, were they not?

The right of challenge exists in every felony.

1822. They were at one time confined to capital cases?

They were at one time supposed to be confined to capital cases. Sir Joseph Napier, I think it was, raised that question on the north-east circuit very many years ago. It was said they were to be capital, and he said, "No, it applies to all felonies." The question was carried to the House of Lords, and he there succeeded, and the man whom he defended, who had been found guilty, was liberated in consequence.

1823. Lord *Inchiquin*] You began your evidence by saying, as I understood, that your experience was derived from practice at the bar on the north-east circuit, up to 1879?

Yes

1824. And subsequently from your position as chairman of quarter sessions?

Yes; I should tell you that I have been chairman of a county for 10 years.

1825. But you ceased to practice in 1879, as I understand?

Under a late Act of Parliament, I accepted a second county, and then I ceased to practice at the bar.

1826. Your experience was derived partly from your practice at the bar on the north-east circuit?

It was.

1827. You stated, as I understood, that the present Jury Act worked well on the north-east circuit up to the year 1879?

Yes; and I do not say that it does not do so still; I limit my experience to that which I have stated.

1828. You said that it worked well, as far as you know, until the present agrarian excitement arose?

Did I say it in those words?

1829. I only say what my understanding of your evidence was?

I did not say it, I think, in that form of words; the present excitement had not arisen in 1879, and therefore if I said it, I did not mean to convey that.

1830. At all events, you said, as I understood you, that barring the present excitement, you thought the Jury Act worked well?

I do think so.

1831. You think that it would work well in ordinary cases where there was no disturbing element?

Yes, I think so.

1832. On the north-east circuit there is a sort of normal disturbing element, is there not, which leads to riots?

Yes.

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1833. Did the Jury Act work well in those cases when you practised on that circuit?

I think so. I would ask you to allow me to give an instance of a trial in which the jurors were selected, and which took place before the Act of 1871, and before I was appointed a chairman. I was the junior Crown prosecutor, and prosecuted with the present Attorney General for Ireland, Mr. Law, in one county in Ireland; and in that county the circumstance occurred which I am about to relate. I do not mean to say that the gentleman who selected the jury conceived that he had done anything wrong, because in what he did I suppose he had but followed the precedent of former days; I know that in that county the jury panel, after an inquiry, was quashed. I remember that on one occasion a man was being tried for his life for having, as was alleged, murdered a man. The case arose out of one of the 12th of July celebrations. A procession had gone by railway from the the town of Ballybay to Castleblayney, where they spent their day of celebration. When they were going back by their special train, a countryman wanting to go that way, and believing that it was an ordinary train, endeavoured to get into one of the carriages, and they pushed him out; the final result of the quarrel was that a shot came from one of the carriages, and the man was killed. The person who shot him was charged with the offence, and although a great many people were there, looking on, no direct evidence could be got from any of them; but persons at a distance did charge the accused, as the person who fired the shot. I remember when the case came on for trial I was beside my leader, and the brother of the accused stood in front of the dock. He looked at the jury, as he had a perfect right to do, naturally feeling for his brother, and when the jury were all sworn, and the prisoner formally given in charge, and the trial about to commence, that brother turned round to us and said, "Now, gentlemen, I may go; that jury will never convict my brother." The trial went on, and the result was just as he had stated it would be. I knew none of the jurors, and Mr. Law knew none of them, but I made some inquiries afterwards, and found that the man who was charged was very well known as an Orangeman, and we heard, whether truly or not, that a great many of the jurymen were Orangemen. Whether they belonged to his lodge or not, I could not say. I do not blame anybody for what occurred in that case; I think the sheriff meant nothing wrong in what was done, for it was what had been done for years and years before; but it made me greatly distrust the propriety of entrusting to any one man the power to select a jury. I think that life and liberty are subjects too sacred to be placed at the mercy of any man's selection; and therefore it is that I give my adhesion to the principle of Lord O'Hagan's Act, that there should be no selection; that you should get the best juror you can by qualification, and that you should empannel him in such a way as to secure an absence of all interference. If, after having done that, there be a verdict arrived at, and it turns out to be an unsatisfactory verdict (as it may do), it is not to the system, but to some other cause, that it must be attributed.

1834. The case you have just detailed to us is one that was tried under the old system, was it not?

It was.

1835. I do not suppose that any one questions in the abstract the merit of Lord O'Hagan's mode of selecting jurors, but Mr. De Moleyns, some years ago, gave, just as you do now, an unqualified adhesion to the principle; and he has now told us that his later experience has very much changed his views; your experience does not seem to have been of the same character?

No.

1836. Have you ever seen a case, such as you have just described to us, given in charge under the present system?

No, it could not arise.

1837. *Lord Privy Seal.*] Do I understand that in your proposal to increase the power of magistrates at petty sessions, you have felt it necessary to suggest that the trial of agrarian cases, of any kind which appears to be beyond the present

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present state of the law, should not be entrusted to the ordinary members of the commission of the peace?

It is merely to relieve the ordinary magistrates (the "local magistrates," as I would call them) from a kind of unpleasantness in dealing with the case that I suggested, the two resident magistrates. If the local magistrates would sit, then I would suggest that one stipendiary magistrate should also sit, before there would be a court formed to decide upon that kind of case; I would not exclude the local gentlemen if they themselves chose to act.

1838. I understood you to say there was a difficulty in having these agrarian cases tried by a court which would, in fact, be a court of landlords?

There is that difficulty in it partly; there is also the unpleasantness in which it would place these local landlords in the country afterwards, and it was for that reason that I spoke of the two resident magistrates; at the same time, if gentlemen, as local magistrates, chose to sit, I can see no objection to that; but I would form the court, at all events, of at least one resident magistrate with them.

1839. Lord *Penzance.*] Resident magistrates should be an indispensable element, you think?

Yes, and in point of fact, now, in the very districts that I speak of, the resident magistrates generally do sit together; I find them constantly calling in the aid of a brother resident magistrate.

1840. Lord *Ardilaun.*] You mean a stipendiary magistrate?

Yes. Cases of assaults on process-servers occur constantly. I have three districts, two in the county of Sligo, and one in Roscommon, where we can get no person to serve processes because of intimidation, and from the fact that one man was severely beaten, and is now lying in the hospital; his clothes were torn off him, and to ensure the destruction of the processes, they threw clothes and all on the fire; the man fled, escaping barely with his life; he received a great number of blows from sticks and stones. If that man could prove those who did that, or those surrounding him, although he might not be able to prove the man who threw the stone that struck him, still if they were all there, the local bench might measure discreetly the different grades of punishment, according to the activity and violence of each individual

1841. *Lord Privy Seal.*] And do you say that such a case as that could not be tried summarily now by magistrates?

I rather think not; at all events they do not do it; they send such cases on to the assizes; whether it is that the Attorney General has made an order or not, I cannot say, but they are sent on, and they are tried at the assizes. This time last year, in the same county, a very old and a very worthy process-server, who had been 50 years in the service, was beaten by a number of men. The case was sent on to the assizes; it failed there, because, I believe, the jury were not satisfied that he had identified the persons charged; and the bench, in that case, might have taken a different view.

1842. Cannot many cases of assault be dealt with summarily by the magistrates?

Yes, all assaults that are assaults simply.

1843. Where is the line drawn by the existing law?

If it interferes with anything touching property, such as questions of rights of property, either personal or connected with title to land, or if it interferes with any other disturbing element which you might call partly political, for instance, such as I believe the present agitation to be, in such cases the magistrates consider they have no power, and that they must send these cases to the assizes or the sessions.

1844. Take the case of a bailiff or process-server being assaulted and beaten; is it competent at present for such a case to be heard at petty sessions?

They do not hear them; I have given you an instance of the case of a man whose name was Whiteside; there was something a little further in that than I have mentioned. I believe some of the men were disguised or had their faces blackened,

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blackened, and they might have thought that a sufficient element for dealing with it as they did.

1845. Lord *Penzance.*] It is not then that the magistrates may not have the power to entertain it, but that the prosecutor chooses to take a different view of it and have it sent to the assizes?

No, the Attorney General I believe issues some order about it.

1846. The prosecutor?

Yes, you call him the prosecutor.

1847. I mean the person who regulates the prosecution; he chooses to take it to the assizes?

Yes.

1848. You do not mean that the magistrates have not legally got the power to deal with a case of assault, do you?

No, they deal with cases of assault continually.

1849. *Lord Privy Seal*] The power of inflicting punishment at petty sessions is very limited, is it not?

It is, but it is quite enough for a great many of these smaller offences.

1850. Lord *Monck.*] If at petty sessions a question of property arises, that ousts the jurisdiction immediately, does it not?

It does; if it is mixed with the assault, they have then no power. There is a special clause that nothing relating to title should be drawn in question. It arises in this way: a bailiff will perhaps seize under a decree, and the party who assaults him says, "You are seizing my goods, and I am not the debtor mentioned in that decree"; and he says, "I have a right to defend my own property." That is really the question to be tried; then I should have to tell the jury this: "If your goods are seized, say for my debt, you have a right to protect yourself, and to defend your own property." There is also a class of assaults which arise (and which are very very frequent in the country) out of disputed rights of turbary. A man says, "You are coming on my bog"; the other man says, "No, this is my bog"; then they begin to fight about it; and that is also a question of title that ousts the magistrate's jurisdiction.

1851. Lord *Inchiquin.*] Is it not the same with regard to questions of trespass?

Yes, crossing a field or a pathway. I do not know what is the case in other counties, but in Roscommon there is a considerable portion of bog not hitherto considered valuable, but now it has become valuable, and every little portion is now claimed and disputed about.

1852. *Chairman.*] In a dispute of that kind, which is a very common one, I mean one arising out of turbary matters where the bog is the landlord's property, and the dispute is between one tenant and another tenant; would that be a case which the magistrates would not deal with on the ground that there was a question of civil rights involved in it?

I think so; I think that is one of the class of cases, because before you can find out who is in the wrong you must decide the civil right.

1853. Lord *Inchiquin.*] Cases are very often sent to quarter sessions because the magistrates have such very small powers of punishing them; is not that so?

I think they can inflict a punishment up to three months' imprisonment; that is my recollection.

1854. Then there is a power of appeal, is there not?

There is.

1855. The moment you reach the power of appeal, there is sure to be an appeal, is there not?

Not always.

1856. *Lord Privy Seal.*] Did I understand you to say that you thought the Crown's power of ordering jurors to stand by, is not as efficiently used as it might be?

If

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If I gave the answer that it was so, it might seem to throw blame upon others. I may say in the county of Leitrim where it was exercised, and exercised very largely, I understood that the verdicts were considered very satisfactory.

1857. It comes to the same thing, does it not?
It does.

1858. Would it not be the case that if, by raising the qualification of jurors, you shortened the panel, that power of the Crown would be considerably weakened?
I do not see how it could be weakened, because the higher the rating qualification the higher the standard of intelligence; in that way you are certain to get a better man, and there would be less necessity to tell a juror to stand by; the necessity would only exist where the officer exercising the power had a strong feeling upon his mind that prejudice would prevent that juror doing his duty honestly in the jury box; and, I believe, when you go up to the high and proper standard, you will get very independent and very proper-minded jurors.

1859. At all events if you had the shorter panel, it would happen that a juror who had been ordered to stand aside would necessarily serve in the end?
No doubt.

1860. Then as to raising the qualification, you seem to be decidedly of opinion that in your two counties, under the present qualification, there is a larger number of jurors than is necessary for the public service?
Yes; but I should add that there is a provision in the Act of 1871 that supposes that a juror would not be asked to serve more than once in two years. That certainly must be set aside, because if you limit the number of jurors they must be called much oftener.

1861. Do you see any serious objection to that result?
I do not in order to get at what ought to be the aim of the whole jury system, which is to put 12 proper men in the jury box. If I may be allowed to make an observation, I would say that the change from selection to rating, and a low standard of rating, cast too many jurors into the jury system after 1871. These men were very often half illiterate, and three-fourths of them were wholly uneducated in the duties of a juror; hence it was that they were awkward, and things were awkwardly done in the jury box, that gave an amount of undue discredit to the new jury system. Instead of throwing it open to too many, it should have been opened gradually, and the education should have come from the higher standard downwards and been enlarged by degrees. For instance, if now the qualification were raised, say for the present, then in years to come as education spread among the people, the standard might be enlarged and the rating go down a little.

1862. Have you formed any opinion as to how much higher you might carry the qualification in your two counties?
I have put it down here in my notes, but it is only a matter of haphazard, because it would have to be gone into correctly. The present rating is, in towns, 10*l.* I would be inclined to increase that to 15*l.*, or even 20*l.*, if the rental of the houses of towns in the county would permit that. The rating is 40*l.* in the country, and I would be disposed to raise that to 60*l.*, that is speaking now of common jurors. For special jurors the rating in towns is 50*l.*, and I would leave it so; but the rating for special jurors in the county of Roscommon is 100*l.*, and I would be inclined to raise that to 120*l.* or 150*l.* In Sligo I have got a different class of rating for special jurors, for the schedules make different standards for them. In Sligo the same rating exists for common jurors, but for special jurors the rating is only 70*l.*, whereas it is 100*l.* in Roscommon. I would have it in Sligo in a corresponding proportion, and I think if there were from three to four hundred intelligent, active jurors, the business of the county might be done very well. It was for that reason that I spoke of doing away entirely with the sessional grand panel, because it really does not count for a juror's service, and it would have the effect of putting an intelligence amongst the

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common jurors in the session court that does not now exist in it; still there must be something equivalent to the finding of a bill, and that must be supplied by the exercise of the prerogative of the Attorney General of the day, either by himself or his deputy prosecuting the case, if there should be time to send the information before him.

1863. Do you think the abolition of the grand jury at quarter sessions would be in any way prejudicial to the parties accused?

If there were plenty of jurors, I should not wish to see the grand jury abolished; but, having regard to the paucity of jurors, and for the purpose of getting the best jurors, I do not see the objection to it that I did once. When I was examined here before, I did express an opinion that they ought not to be abolished, believing then that there were plenty of jurors for all the purposes of the Act of Parliament. Another way, perhaps, of considering the question of jurors would be to limit the number of peremptory challenges in cases of felony to 10 instead of 20, of course leaving it 20 in cases of murder. That is a question that could only be raised at the assizes; but in ordinary felonies, larcenies, and that class of felony, the power to challenge 20 men takes a number of the very best men off the jury.

1864. Lord *Penzance.*] You have put the number, I observe, which you think would be a reasonable number to do the business of the county at three or four hundred?

Yes; that is in the medium counties.

1865. Have you considered whether the particular rating standard which you have suggested to the Committee would, if acted upon, produce those numbers?

I could not say that exactly.

1866. You have gone into statistics to enable you to do so?

No, I have not.

1867. When you give the figures as to the standard of the proposed rating, you give them subject to the result being such as to produce a jury list of 300 or 400?

Yes, I do. I have not the elements of that before me, and could not answer definitely without seeing how every man was rated, and that I could only do by a tedious examination of the books of the Poor Law Union.

1868. *Lord Privy Seal.*] Is it not the case that if the general valuation of Ireland were to be revised, and probably raised, that that would bring in a very considerably increased number of jurors?

No doubt.

1869 And bring them in at the bottom of the scale?

No doubt.

1870. Lord *Penzance.*] It would be of great assistance to the Committee, I think, in reference to your suggestion about increasing the summary jurisdiction, if you could suggest to the Committee the sort of offences that you would have tried by a tribunal of that kind?

I was going to intimate the interference with the service of processes as one class.

1871. Would you say threatening letters?

No; I would put that in a very different category, because you do not immediately get at who is the writer of that letter, and it is a thing only sometimes to be ascertained by experts and by comparison, and it is difficult; but ringing of bells and threatening people in any way I would suggest should be tried by the magisterial tribunal.

1872. That is, threatening people in any other way than by letter?

Yes, you can understand that if a lot of persons surround a single man, and threaten or show a demonstration of force, and it prevents him doing his duty, that

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that would be such intimidation that I think the magistrates should have power over.

1873. Let us go through them; intimidation of process-servers, you say; then ringing of bells, or anything of that kind calculated to intimidate anybody, whether process-server or not?
Yes, anybody.

1874. Or any way of threatening individuals, other than by letter-writing?
Yes, that is a very large expression; every other way except letter-writing.

1875. You mean, you would include only those cases of intimidation that took place in public?
Yes.

1876. Then with regard to assaults, they are at present within the jurisdiction of the magistrates?
They are assaults simply.

1877. And the only reason why they do not come before the magistrate is because the prosecuting authorities, whoever they are, prefer to take them to the assizes?
Yes, when joined with other elements.

1878. Which may be because they can get a larger punishment, and it may be because they can get a better jury?
Possibly.

1879. I am speaking of trying before magistrates; that is why the prosecuting authority would prefer the magistrates to a jury?
I should say so.

1880. Do any other cases occur to your mind?
There are several ways, besides striking a man, by which you can intimidate him; you may deprive him of what he has seized. For instance, the case has come before me of people standing upon a road along which a beast is being driven which has been legally seized; the beast may be driven where the sheriff's bailiff cannot follow it.

1881. That is interfering with the officer of the law?
Interfering with the officer of the law in the execution of process.

1882. All such cases of interference you would set down as proper to be tried before the magistrates?
Yes, and cases called "Boycotting."

1883. Then you would include sticking up a notice?
Yes.

1884. That would be a Boycotting notice?
Yes, a Boycotting notice.

1885. Would you limit the proposed extension of summary jurisdiction by the amount of punishment to which the offence subjected the man; would that be the line you would draw, or would it be the character of the offence?
I think the magistrates have power enough, ordinarily speaking, of punishing any of those offences. If they thought it was a more grave offence, they have, of course, the power not to deal with it summarily, but to send it on for trial to the assizes; that would be in their discretion.

1886. That is the case now?
That is the case now, but they have not the other power.

1887. I am thinking of what the alteration is that you are proposing in the extension of the summary jurisdiction of the magistrates?
I would leave the power of punishment up to three months; that is, I think, quite sufficient for any of those offences.

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1888. Would you extend the present jurisdiction in this direction: that they should be authorised to deal with any case for which a punishment of three months would be an adequate punishment?
Yes, I would.

1889. That would be one mode of looking at it?
Yes.

1890. In your opinion, the effect of that upon the population, that is, the promptness and the greater certainty, although the punishment were less than the offence might, perhaps, deserve, would be more efficient?
That is my belief; a speedy and prompt conviction is far beyond a deferred one. The memory of the thing is gone away from the people, and they forget all about it.

1891. *Chairman.*] Would you include in your list such an offence as that of forcible re-entry into possession?
That raises a very serious question. I would not. There are two classes of forcible possession; one of them is, where people take the forcible possession of their own motion. That has come before me, and I have dealt with it as presiding chairman; but there is a class of cases now far beyond that, in my opinion, in magnitude and enormity; that is where people band together to bring back by force an evicted tenant, to put that tenant in, and force him to remain there. That is a violation of the law, and it is against the principles of government by the State, and I think that ought to go to the assizes, to be tried there before the judge of the superior court.

1892. Just one other point as to the number of challenges; the number of challenges in cases of misdemeanour is six, is it not?
Yes, that is the number given by the Act.

1893. That is a recent innovation, is it not?
It was introduced in 1876.

1894. Do you think that was a desirable innovation?
I take it the moderate right of challenge was desirable, because a man might see on the jury some person who had been his personal foe, and I think it was quite right. When you consider that the jury is drawn from the immediate neighbourhood, I think it is quite right to permit that challenge.

The Witness is directed to withdraw.

MR. ADAM MITCHELL, having been called in; is Examined, as follows:

1895. I BELIEVE you have had a long experience as a practising solicitor?
Forty-three years.

1896. And you have held the appointment of Sessional Crown Solicitor for 14 years?
Yes.

1897. For King's County?
For King's County.

1898. Your official experience, I presume, has given you ample opportunity of watching the operation of the jury laws?
It has, and it does.

1899. Would you state, generally, your opinion to the Committee of the way in which those laws work?
Before I was in the profession at all I was attending the assizes in my own county. I attended, I think, 102 assizes in the King's County when I was yet a boy. I have known when the juries in those days acted very well, and many issues

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issues were directed in my memory from the Court of Chancery to try questions, because the jurors in the King's County were found to be so good. There was a very good class of gentlemen farmers who held a good deal of land and discharged their duties very well.

1900. Those were jurors qualified under the old qualification?
Under the old system.

1901. Freehold and leasehold?
Yes; they dwindled down to a very small number. In one barony and parish on the estate of Lord Digby it was found there were but 10 jurors. That was a very large estate in the King's County.

1902. They dwindled to such an extent that it became at last almost impossible without breaking the law to get a jury, we have been told?
Yes; there were great complaints as to juries both at assizes and sessions.

1903. May we take it that upon the whole you are satisfied that a change in the law upon the lines of the Act of 1871 was necessary?
I think there was a necessity for that Act.

1904. I also gather from what you say that you do not think the present system is absolutely perfect?
It is not, indeed.

1905. Would you state in what respects you think it fail?
I think that the class of jurors that are summoned at present are liable to intimidation. I have known instances where they have been watched going into court or into the box where they were waiting to be called, and canvassed as to the way in which they discharged their duty. I have seen such things myself in cases that I have prosecuted in the last 12 or 14 years. In one case the friend of a man on trial for assault was in court and was found nodding to a juror who was in the box. That occurred at Parsonstown, where I reside. He was reprimanded for it. There was no verdict in that case.

1906. Is it your belief that the two events stood to each other in the relation of cause and effect?
Yes.

1907. Have you no stronger case of canvassing than that in which the friend in court nodded to the juror in the box?
There are other cases. I know even a case of larceny where the relatives of a party accused of larceny were on the jury. We did not know it at the time the jury were called; I had no one to inform me of the fact. I had three indictments against that party, a woman. She first robbed her master (he was a doctor), she robbed her mistress, and she robbed a fellow servant; and on each of the two juries that tried her there were persons connected with her. She was defended by a solicitor; and the third indictment, which was a minor case, I said I would send to the assizes, and immediately her solicitor consulted with her, and she at once pleaded guilty.

1908. But a case of that kind, when a prisoner has relatives in the jury box, is precisely the sort of case that, I presume, it was intended to deal with by giving the Crown unlimited power of ordering jurors to stand by?
Yes.

1909. In this case, by an accident, it so happened that the prosecution was not aware of the connection between the juryman and the defendant?
They were not aware, and even in that case the class of juror was very bad.

1910. From what class of life are the jurors generally drawn?
Most of them are small farmers.

1911. When you say that the class of jurors is generally bad, do you say that as indicating your opinion that they are unfit generally to try a particular class of cases?
I declare I have remarked in the last few years that I should think they are

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unfit to try most cases; for they have become so bad now that even in a sheep stealing case they would not find a verdict.

1912. Lord *Penzance.*] Is that from defective intelligence, do you mean, or sympathy?
I should say from sympathy.

1913. *Chairman.*] A great deal of the evidence which we have received points in this direction, that in cases of larceny and offences against property, as a rule, you may trust the jury very fairly, but in a particular class of cases that touch their sympathies very closely you would not trust them in that way?
I think that was so formerly to a large extent, but not latterly, because I think the people have become completely demoralised within the last 12 months.

1914. Going back behind the period of demoralisation, were the jurors before that time disposed to do their work fairly well in ordinary cases?
They were.

1915. They did not show any want of intelligence you think?
The great majority of them show a great want of intelligence.

1916. Did they allow themselves then to be directed by the judge?
The judge of the county court in my county, both the present judge, Neligan, and the late judge, Jellett, took a great deal of pains to explain to the jurors the difference in the evidence that was given for the Crown, and for the prisoners; however, they did that, and they had very great difficulty in making them understand it; in some instances the juries found according to the charge, but in others they did not, so much so, that in cases of assaults I have known Judge Neligan to say: "Gentlemen, I am very glad that is your verdict, and not mine." At the very last sessions there was such a case before Judge Neligan, and he expressed the greatest astonishment at the acquittal of a person charged with stealing a trap, and he said to the prisoner, "You had better not steal any more traps; you may not find a jury like that to acquit you again."

1917. To what do you attribute this conduct on the part of jurymen?
I am sorry to say that I think that these people have no regard for an oath now; it is sometimes caused by fear.

1918. And do you think it is due to any other cause?
Sympathy.

1919. Lord *Penzance.*] Are they inclined to support the law; have they any feeling of that kind?
Quite the reverse.

1920. *Chairman.*] But you say that with reference to the time through which we are now passing rather than as to the state of the country ordinarily?
I must say, from my recollection of what we were and what we have been in the last 15 years (and it is with the greatest regret I say it), my idea is that the sympathy of the jurors is with the party charged, no matter how guilty he is, and there is no anxiety to support the law. As regards that class of cases that has come on lately, such as riots and unlawful assemblies, it has been found impossible to deal with them; magistrates cannot deal summarily with that class of cases. Riots and tumultuous assemblies must be either sent forward to the assizes, or the magistrates may, if they think proper, bind the parties and sureties to be of good behaviour.

1921. But the magistrates cannot inflict any punishment?
The magistrates cannot inflict any punishment in cases of riots, or of tumultuous assemblies, such as have recently taken place.

1922. Are they precluded by statute from doing so?
They are.

1923. Lord *Penzance.*] Do you think that should be altered?
I think it is very desirable that it should be altered.

1924. And that magistrates should have the power to deal with those cases?
Yes;

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Yes; I think they should have the power. At the last assizes of the King's County I got informations against eighteen parties who met a Mr. Dudgeon, a magistrate of the county of Longford, who went to a place called Clara, in the King's County, to collect rents; it was known that he would arrive by the eight o'clock evening train, and a large crowd of persons assembled. He asked for a car, but was unable to get it. They knew he was coming, but they refused it. Fortunately the constabulary heard it; there were only three constables in that town. They guarded him; he was not allowed to go to the hotel; the violence was so great that they kept him at the station-house, and he was detained there by the mob, who remained about the place hooting, and calling on them to "Throw out the murderer." They stayed from eight until past one. He said to one of the police, "Go and tell them I will take Griffith's valuation," thinking it was on account of the rents he came down, and it was so, no doubt; but they said then, "No, he is a murderer; throw him out, and we will run him through." He had to walk seven miles at two o'clock in the morning to an adjoining town, not being able to get a car, escorted by the three constables.

1925. You say you had eighteen informations?

I had informations taken by the magistrates against eighteen of those parties, and returned for trial to the assizes; and when the assizes came on, so certain was the Crown solicitor and myself that we would get no jury, on the evidence, to convict them, that we thought the best thing was to effect a compromise, which was suggested by the Crown counsel also, and these parties were bound over in sureties to keep the peace; and that gentleman's offence was that he had the week before prosecuted a man for firing at him on the high road in the county of Longford.

1926. Those are cases you would have dealt with by the magistrates, would you?

I would; and I certainly would not exclude the local magistrates.

1927. *Chairman.*] I was going to ask you that question; when you speak of the magistrates, do you include the local magistrates, or are you speaking of the stipendiaries?

I would include the local magistrates because of my experience of them; and I have had vast experience of petty sessions before now, and my experience is that they have always discharged their duties very well, and have always taken a merciful view of the cases that came before them. There was a very bad case I prosecuted not long ago in Tullamore at the petty sessions, in which nine women were charged with violently beating a process-server, taking the processes from him and throwing them into the canal. They battered his face. There were nine charged, and the magistrates convicted six out of the nine, and sentenced them to a month's imprisonment.

1928. It might no doubt be the case, as you suggest, that the local magistrates would exercise their power with discretion; do you not think that what was suggested by the noble Lord on my left, while you have been in the room, would happen, namely, that there would be a great deal of dissatisfaction if cases of this sort, arising out of agrarian matters, were tried by a bench which was composed in the main of persons belonging to the landlord class?

I think there would be an objection in any case.

1929. You do not think, if such cases were tried by the stipendiary magistrate, that his mode of dealing with them would probably command more public confidence?

I am quite sure that the adjudications of resident magistrates, so far as my experience goes (and I have had experience in four counties), have always been accepted with the greatest possible respect.

1930. By all classes?

By all classes.

1931. Lord *Ardilaun.*] What do you mean by "resident magistrates" in that answer; do you mean stipendiary magistrates?

Yes.

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1932. *Chairman.*] You, as Crown Prosecutor, necessarily, I presume, make it your business to know something about the persons who are on the jury panel?
Yes.

1933. There is no other opportunity afforded of keeping an improper person out of the jury box, except that right of telling an unlimited number of jurymen to stand by, is there?
No other; and I may say that occasionally, when there is an important case, I sit by the Crown solicitor at the assizes, and I say to him, "You had better order that man to stand by." "What in the world is the use of that?" he will say, "for the next man will be as bad."

1934. I forget whether you have expressed any opinion as to the existing qualification of the jurors?
I have not yet; I certainly think it should be increased.

1935. Do you think that by increasing the qualification a few pounds you would at once get a better and more trustworthy class?
I do not think we would at once, but I think after a time we might. I heard Mr. Hamill say that the barony cess collectors should be on the list. Well, they take part in the formation of the panels, and I think they would be better exempted still. And as to civil engineers and architects, except in cities, there are very few in the districts where quarter sessions and assizes are held throughout the country. Bank managers generally make application to the county court judge, in consequence of their duties, and they are exempt.

1936. What your evidence comes to is this: that, particularly at the present time, and with regard to a particular class of offences which you have specified, it is impossible to place any confidence in the manner in which a common jury is likely to do its duty?
Wholly impossible.

1937. And the only recommendation you have made, I think, so far, is, that the jurisdiction of the magistrates should be increased, so as to enable them to deal with minor offences with which the law does not at present allow them to deal?
Yes, with minor offences; the graver offences, I have spoken with members of my profession, who represent all shades of opinion, and the opinion is that at the present moment you cannot get a jury to find a verdict in those cases. My opinion is (and I mentioned it to one or two others, and they agreed with me), that in graver offences they should be tried by two judges, strange as it may be to suspend the operation of that ancient law of trial by jury.

1938. You do not think you could arrive at the ends of justice better by changing the venue when the district in which the trial was to take place was a disturbed one?
I think not, because I think the system that is abroad at present would utterly prevent that being effectual.

1939. What system do you refer to?
The members of that body called the Land League. Mr. Hamill spoke highly of Roscommon. I am sorry to say from the county of Roscommon some of the worst characters have come into the King's County to disturb it; they have come across the Shannon, and that being so they have it in their power, no matter where the case is tried, through the various ramifications of their bodies, to extend intimidation or to induce the juries not to find verdicts.

1940. That would point to the insufficiency of merely changing the venue to the adjoining counties, would it not?
Yes.

1941. What would you say if it were changed to a more distant part of the county?
I think the same would apply.

1942. You think the organisation is so extensive that that is the result?
I think

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I think the organisation is one of the vastest that there has ever been in this country.

1943. *Lord Privy Seal.*] I suppose you feel confident from what you have stated, that the jurors' qualification might be considerably raised, and that you might still have a sufficient number to perform the duties?
I think we might have a sufficient number to perform the duties.

1944. Do you find the present number is beyond what the duties require?
I do. I think the jurors might be very well called upon to attend at the sessions once a year.

1945. That would at once make a great difference?
Certainly.

1946. Then I suppose your view would be that the qualification might be raised to any point that would be consistent with providing a sufficient number of jurors?
Certainly.

1947. As to jurors of the old classes who were not disqualified, as I understand; that is the freeholders and leaseholders; in what condition are those classes now in your country; I suppose the leaseholders are but few?
Very few.

1948 And as to the freeholders, what do you say?
The freeholders are very few also.

1949. Are they fewer than they were then?
They are.

1950. Why?
At the time of the Reform Act there were many leases made.

1951. The freeholders are not what we commonly understand by freeholders in this country, but small lessees for lives?
Precisely so, lessees for lives.

1952. They have also greatly dwindled down?
They have greatly dwindled down.

1953. Beyond the mere raising of the figure of rating, do you see any means of increasing the number of jurors of the better and higher class?
I heard Mr. De Moleyns suggest that sons of magistrates and members of the universities should be placed upon the jury list; I think those were two of the additions that he suggested should be made.

1954. Do you think there are many residents in an Irish county who might be available as jurors, but who do not possess any rating qualification, who are not householders?
I think there are.

1955. You think there are a certain number whose services might, if it was thought proper to change the law, be used as jurors?
I think so.

1956. And who would be a valuable additional element on the jury list?
No doubt.

1957. How was it that the magistrates at petty sessions were able to try that case you have told us of where the women assaulted a process server?
That was an assault.

1958. A common assault?
A common assault that the magistrate had power to deal with.

1959. It did not come under the head of riot?
No; the men studiously kept out of the way, and put the women forward on that occasion.

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1960. Did I understand you to say that in your county, at this moment, a jury of farmers would not convict a sheep stealer when there is evidence enough?

I will give an instance which occurred at the very last quarter sessions which were held in the present month. The brother of the man I speak of pleaded guilty, and the same evidence was adduced against the man who was put on trial as was to be produced against the brother, and the jury would not bring in a verdict; they disagreed.

1961. How do you account for that. I suppose farmers have not much sympathy with sheep stealers, as such?

That is a case I could not well account for, except in this way, he was a man that came from the Queen's County; that was the man put on trial. He and his brother lived in a house together. A gentleman farmer came up to me and said, "Why in the world did you let the one that pleaded guilty off with nine months, and not convict the other?" "The jury did not discharge their duty in the one case, and I had nothing to do with the sentence in the other." "But how will you account for it; is it that he had friends on the jury?" "I account for it in no other way than this, namely, that he is a regular party man." I give you that just as an explanation.

1962. Lord *Ardilaun.*] Have you any knowledge of any respectable gentlemen farmers, or others, who would make good jurors, having left the country, or who are about to leave the country, owing to the present state of things?

I know a great many would leave if they possibly could. I could not give you instances, but I know that it is a fact.

1963. You mean that there are a great many desirous of leaving Ireland owing to the present state of the country?

Certainly.

Ordered, That this Committee be adjourned to To-morrow, at Twelve o'clock.

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Die Veneris, 1° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Lord Privy Seal.	Lord Penzance.
Earl of Derby.	Lord Emly.
Lord Tyrone.	Lord Ardilaun.

The MARQUESS of LANSDOWNE, in the Chair.

Mr. ALEXANDER MORPHY, is called in, and Examined, as follows:

1964. *Chairman.*] You are, I believe, Crown Solicitor for Kerry and Clare, are you not?
Yes.

1965. How long have you held those appointments?
Just 20 years.

1966. I need not ask you whether you have had ample opportunities of attending to the operation of the Jury Laws?
Certainly; I daresay I know as much of the investigation of cases before juries at the assizes during that period as any person.

1967. I see you gave evidence before the House of Commons Committee on this subject in 1873?
I did.

1968. And I infer from the evidence you gave at that time, while you admitted that there were some imperfections in the new jury system, you were disposed, upon the whole, not to revert to the old system?
That is so.

1969. And is that still your opinion?
If I could do it now, I would revert to the old system.

1970. The distinctive feature of the old system was that the sheriff had the power of selecting jurymen?
Precisely.

1971. And when you say that you would revert to the old system if you could, I presume it is because the old system had that peculiar feature in it?
The old system had that peculiar feature; I only now speak of the counties with which I am conversant, but I believe there was never in living memory an instance where that power was improperly exercised or used either in Clare or Kerry; I have never heard of such a case, and there is no tradition of it.

1972. As a question of practical possibility, do you think that we could entertain the idea for a moment of again placing in the hands of a public official unlimited power of selection?
I think not; I think it would give rise to so much commotion that it is impossible.

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1973. Would you approve of the change which was made in 1871 in other respects in so far, for instance, as that it distributed the burden of service upon the jury more fairly?

I think not; I think, if I may be permitted to state it, I could say what, in my opinion, would improve it, and would work fairly well, and would get rid of some of the enormous disadvantages of the present system of working. In my humble judgment there is a complete failure of justice in nearly all cases of outrage against the person.

1974. I also observe, in your evidence given in 1873, that you stated that, with some alterations, the new system could be made to work well, and you suggested, as an expedient alteration, some change in the rating qualification?

Yes, I did.

1975. That change in the rating qualification has been made, has it not?

There was a change made; but it has not caused the system to work satisfactorily yet, in my opinion.

1976. The result of the change has not answered the expectations which you would have formed of it?

It has not improved it much, I think.

1977. At any rate, your opinion is that the present rating qualification does not give you a satisfactory class of juror?

I am quite sure of it.

1978. Will you state from what class in life the jurors are at present drawn?

In Clare there are about 75 per cent. who are farmers; and in Kerry there are about 80 per cent. who are farmers.

1979. The residue being drawn from what class?

Country gentlemen, and occasionally drapers and people who have employment in towns, and who are shopkeepers in towns.

1980. Then we may take it there is only a small minority of jurors who represent the more educated and intelligent classes?

A very small minority; if you pleased, I could tell you the exact numbers.

1981. We should be very glad to have an illustration of that kind?

The general list of jurors in Clare numbers just 900, or it may be one or two on either side of 900; and upon that list there are 700 farmers; they are so described on the list. In Kerry the general list numbers 1,060; and of those there are 726 farmers. On the special list in Clare there are 230 persons, of whom 170 are farmers. In Kerry the special list is identical in number, namely, 230; and of those there are 145 farmers. The assize panel for Clare averages about 140; sometimes it is a few more and sometimes a few less; and the per-centage of farmers is 75 per cent. In Kerry the panel is smaller; it does not average more than 90, and there are about 80 per cent. of farmers.

1982. And I suppose the bulk of those who are not farmers would come under the definition of "traders" and "shopkeepers"?

Shopkeepers and gentlemen; there are a very few country gentlemen on the list.

1983. Could you state the number of country gentlemen who are on the list?

I think in the last panel for Kerry, there were about seven described as "gentlemen."

1984. Seven out of 900?

No; the last panel in Kerry was 80; it was smaller than usual at the last assizes. The last panel in Clare numbered 146; and I daresay without counting them exactly, there are probably 12 persons who are described as "gentlemen" on it.

1985. We have had a good deal of evidence pointing to the conclusion that this small minority of jurors of better position is considerably diminished by the fact that some of them have to serve upon the grand jury, and that some of them are required for service on the special jury; is that the case?

That

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That is so; 23 always serve upon the grand jury; 23 are taken out of the gentry of the country to serve on the grand jury. Then if there are special jurors required, they are taken from the special jury list of 230. It is at present in each county 230; and those 230 include all the gentry of the county.

1986. That makes a very considerable inroad upon your minority of higher class jurors?
A very considerable inroad.

1987. Is it the case beside that, that you very often find that these country gentlemen are not extremely anxious to take their term of service?
No, they appear to shirk it; they avoid it.

1988. Is there any means of preventing them from shirking it?
They expose themselves to so much annoyance by serving, that I can well appreciate their being quite willing to submit to a pecuniary loss in the shape of a fine in order to avoid it.

1989. The fine does not really act as a deterrent?
I think not.

1990. Is the fine always enforced?
I believe the 2 *l.* fine is enforced; that is the fine for not answering to their names when first called; they are allowed to excuse themselves from it upon filing affidavits, which cost money and trouble.

1991. It rests with the judge?
It rests with the judge.

1992. And as a rule is the judge satisfied if he gets his jury?
I think it is compulsory upon the judge in the first instance to impose the fine; but then, as far as my observation goes, it is not difficult to persuade the judge upon sworn explanation to remit the fine. It is one of the serious difficulties of trying to vindicate the law at present, that the gentry do not go upon the juries if they can avoid it.

1993. There is a distinction between the fine levied when the list is called over for the first time, is there not, and subsequently?
Yes, the 2 *l* fine is the fine imposed when the list is first called.

1994. Then there is a subsequent fine, which may be of a higher amount should the list be called over again, and a sufficient number not be forthcoming?
If there were not a sufficient number to form the jury, the judge would inflict a larger fine; but I think practically that fine is never levied.

1995. Has it been levied within your experience?
I think I may say that practically it is never levied. The judge says at the end of the assizes, "Well, there has been a fair attendance of jurors, and I will remit all fines."

1996. That was the drift of my former question; if he finds there is a fair attendance of jurors, and the jury is formed, he will not be extremely strict in enforcing the fine?
My observation goes to the effect that he remits the fines.

1997. *Lord President.*] Even the 2*l.* fine?
No, the 2 *l.* fine has to be explained away by an affidavit, and I think it is the judge at the subsequent assizes who remits it.

1998. Lord *Inchiquin.*] The judge is obliged to inflict the 2 *l.* fine, is he not?
He is; my opinion is that that is mandatory.

1999. *Chairman.*] Then to come back to the minority of the better class of jurors, we have also been told that a good many of them are kept out of the jury

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jury box owing to the manner in which the right of challenge, which the law allows to the accused, is exercised?

It invariably is so. As the better class of them come to the book to be sworn, the jury is "wed" by the prisoner; that always happens.

2000. Therefore, all these circumstances conspire to keep out of the jury box that small leaven of superior intelligence which you find upon the jury lists?

It completely effects that purpose; that is the result of it.

2001. Now that we have found out something about the composition of the jury, would you kindly tell us in what manner, according to your appreciation, juries so composed have discharged their duties?

That is the juries that have been acting, your Lordship means?

2002. Yes?

I think that in a very large per-centage of the cases, I would certainly say 9 out of 10, where the offence has been outrage against the person, there has been a failure of justice.

2003. But you limit that to a particular class of offence?

Yes, outrage against the person. I think the juries, as far as I observe, are quite ready to vindicate the law when property is in question, such as in larcenies.

2004. Lord *Inchiquin.*] Is it so in land cases?

No, in agrarian or land cases the present jury system renders the law a dead letter.

2005. *Chairman.*] Will you state what, to the best of your belief, is the motive which induces the jury to behave differently in this one particular class of cases, that is outrages against the person?

I think the principal motive is fear; the juries are, I think, canvassed; scarcely one is left uncanvassed. It has come within my own experience again and again. I should say in four cases out of five the prosecutor will say to me, "I hope, sir, you will see carefully to the jury, and the sergeant of police can tell you that the prisoner's friends have been boasting that they are all right, that their friends will attend," and so on. The people themselves thoroughly appreciate this abuse.

2006. Then you think it is actually fear of consequences to themselves?

I think their fears are appealed to, and their sympathies are appealed to, and their interests are appealed to. You will bear in mind that in Ireland in reference to the people who now constitute the juries, some members of their families are frequently in trouble for offences of this description; they get into fights at fairs and markets and some one is injured, and you will see a man of just as good a class as his jury in the dock being tried for a serious assault case. A compact, I believe is made or offered to these people such as this: "When your friend is in trouble we will stick to you, and the prisoner's friends will stick to you and get you out of it, but you must look to them now; and besides, when the dark evenings come, you will be returning from fair or from market, and you ought to take care that some of these people do not give you a knock."

2007. A sort of mutual insurance you mean?

A sort of mutual insurance; if the better class of jurors could be got in even to the extent of a few, that would be to a great extent guarded against.

2008. I see that you expressed an opinion in 1873 in favour of keeping small farmers out of the jury box altogether, if it were possible to do so?

I have not read my evidence, but as well as I remember, I thought that increasing the qualification would give probably a better class of people altogether, a more independent-minded people. That is what I think was on my mind at the time. I do not know whether I expressed it or not; I thought that it would give more courageous-minded people.

2009. It occurs to one that, judging from the figures which you have given us, showing the immense preponderance of farmers upon the list, that if you got rid of the farmers you would have very little left to make a list out of?

Yes,

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Yes, but there are farmers and farmers; you may get a higher class of farmers.

2010. You are speaking only of the lower grade of farmers?
There are many of them who are men of very poor intelligence and poor spirit who are rated up to 40 *l.*

2011. Still, in many parts of the country a farmer rated at 40 *l.* is called rather a strong farmer, is he not?
That is so; in Kerry he would be. I think the qualification in Kerry for a special juror is lower than the qualification in Clare. I think in Kerry it is only 70 *l.*, and in Clare it is 100 *l.*

2012. And you think that by raising the qualification a few pounds you would arrive at a level where there was superior intelligence?
Many pounds.

2013. Have you any figures in your mind when you say that?
I would put the qualification rating for jurors on the Crown court panel at what it is now for special jurors. I would limit the duties of those jurors to the trial of criminal cases at assizes. I would relieve them from the attendance at quarter sessions, and I would try also and add to the list a class of jurors, with, if I may so term it, a fancy qualification such as sons of magistrates, sons of clergymen, and retired naval and military officers.

2014. Have you considered at all what effect a change of that sort would have upon the numerical strength of the jury list?
Yes, I have it here; the special jury list in each county does at present give 230.

2015. Therefore you would bring down the list from 900 to 230?
For criminal trials at the assizes. Your Lordship will bear in mind that the important cases of the county are tried at the assizes; I would then endeavour to increase the list by class qualification.

2016. Coming back to that particular class of offences of which you were speaking just now, should you go as far as to say that there was very little prospect of a jury, composed of the materials which usually form a jury, doing their duty in a proper manner?
Indeed, I think the probability of it is very slight.

2017. Do you say that with reference to the present state of the country, which we know is rather a peculiar one?
Before that there was a failure of justice in most cases where the offence was outrage against the person. Recently, during the excitement and agitation which prevails now, the existing jury system, in my opinion, has failed completely. An instance is within my own knowledge and personal experience, where, two days before the trial, I knew the people were to be convicted. That was a case at the last Tralee assizes, the spring assizes; I was well aware beforehand what the result was to be, although it was one of the offences which seem to carry the sympathies of the jury with it at present. I knew beforehand that there would be a conviction.

2018. Lord *Tyrone.*] You say convicted; do you mean that?
Yes; convicted.

2019. That is to say, against the evidence?
No; the evidence was quite sufficient to convict them six times over. That would not have got a conviction, however, but that the Land League in Tralee permitted that they should be convicted

2020. Lord *Inchiquin.*] Gave permission, you mean?
The Land League gave permission, and they did more; they expressed an intimation that they should be a conviction, and I knew that.

2021. *Chairman.*] Was there anything peculiar about that case?
I think that one of the accused persons was nephew to the land bailiff of a large estate. Whether that was the reason or not I do not know, but I was aware

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aware two days before the trial took place that the Land League had been asked for, and declined, to give any pecuniary assistance for the defence of those people, and that the word went out amongst the jurors that there was no objection to a conviction in the case. I was as well aware of that before the trial as after, and the result proved that it was so; they were convicted after very short deliberation, and one of the men is undergoing ten years' penal servitude now for the offence for which they were convicted.

2022. Have you ever been aware of the converse case, where it was perfectly well known beforehand that the accused were not to be convicted?

It is frequently regarded by my colleagues and myself as hopeless to go to trial; we are perfectly well aware that there is to be no conviction. In Kerry, I am able to say, although it is not a thing within my actual knowledge, but I am authorised to state it, that the very day, or the next day, after the panels are printed, there is such a demand upon the sheriff for copies, that it would exhaust them five times over if he had so many printed and wished to make a little income from it.

2023 What inference do you draw from that?

The inference I draw from that is, that it is to enable the people in the different parts of the country to canvass the jurors personally one by one, and either to intimidate them, coax them, or wheedle them, or in some way or other to "square" them. That the jurors in Kerry are canvassed from man to man is a matter about which, I believe, there cannot be a shadow of doubt, and it is done effectually. I mentioned to your Lordships the converse of the proposition, the giving permission to have people convicted, as being more peculiar and unusual.

2024. The Crown now has an unlimited right of ordering jurors to stand by? Yes.

2025. Do you attach great importance to the exercise of that right?

As far as I can observe, it does not affect the results. Men are ordered to stand by who are known to the Crown solicitor to be biased and partial jurors; but it does not appear to me to affect the result. I have the panel of the last assizes in my pocket, and if I were to select the jury I could not get one that would act upon the evidence, as against their own sympathies.

2026. You could not find 12 men who would act upon the evidence, you think?

I could not find 12 such men; I could not select a jury that would act upon the evidence in a case of outrage against the person, or any case in which there was the slightest tinge of agrarian element.

2027. Lord *Inchiquin.*] What county do you refer to?

That would be in Kerry.

2028 *Chairman.*] Should you say the same of the county Clare?

I think the Clare jurors are better; but I think if there were the slightest element of the land question in it they would not act upon the evidence.

2029. That is a very serious state of things, is it not?

That is my opinion at all events, and it is the result of my individual experience.

2030. Has it occurred to you that in order to meet the difficulty which has thus arisen, any steps could be taken?

That is steps in improving the present system, but keeping the present system as the basis of it.

2031. First take it upon that ground?

I ventured to tell your Lordships a few moments ago that I think if a panel was kept specially for the trial of criminals at assizes (that being the tribunal where the serious and important criminal cases of the county are always tried), it would greatly improve the present state of things. I would suggest that a special jury should be kept for those trials, giving the rating qualification as it is at present for special jurors, and adding to the number of the list by what I described as "fancy qualifications."

2032. Have

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2032. Have you any other suggestion to make?

Perhaps the Committee may think that I am going too far: but I may state that in Ireland, where first and foremost the cases are very carefully investigated by the magistrates, where, in the second place, they are investigated by the Crown solicitor before he submits them to the Attorney General, and if anything requires explanation he explains it to the Attorney General; then the Attorney General fiats the case, giving permission to have it prosecuted. I think that in a lifetime it would not occur that any person would be sent for trial where there was not a *primâ facie* case upon which to convict him if it were unexplained, and that consequently in Ireland the functions of the grand jury are unnecessary in criminal cases.

2033. You say that with the idea that by getting rid of the sessional grand jury you would liberate the grand jurors for service on the common juries?

I would do it both; with regard to the assizes and the quarter sessions, it could not be applied in one case without the other. You would give 23 men who could not be tampered with, or biassed, or terrified. I would also suggest doing away with peremptory challenges; I would allow no peremptory challenges.

2034. Are there not some cases where the accused person may have very good reason for believing that a particular juryman is prejudiced, and where, nevertheless, he may find it difficult to bring forward positive legal proof if the prejudice exists?

Yes, many cases may so arise; but the Crown Solicitor, who is responsible to the Attorney General and to the Government, knows that his duty is to see an impartial and fair trial. If I may say so (being one of the Crown Solicitors myself) I believe that the Crown Solicitors go as calmly and impartially to work in conducting a criminal trial as the judge on the bench himself; and if such a thing happened as that the accused, or the professional gentleman acting for the accused, should say, "We would rather Mr. So-and-so should not serve on this jury," I would, and I am sure that every one of my colleagues would, in a moment, say, "Stand by." Such a thing as forcing a juror into the box against the wish of the accused would not arise.

2035. Do you think the public would be content to have it so?

I think that trying to satisfy the public about it would be a very up-hill game.

2036. It would be represented in this way, would it not, that the prosecution was entrusted with the duty of saying who was, and who was not, to be upon the jury?

The accused person would have still the right to say, "For this reason, or that reason, I do not wish A. B. to try me." I would not restrict them in any respect in that way; I would give unlimited power of challenge for cause, but I would not give peremptory challenge.

2037. It has been suggested by one or two witnesses who have appeared here, that in some of those offences which you have described, at all events the less grave ones, the summary jurisdiction of the magistrates might be extended; is that a proposal that commends itself to your judgment?

Indeed it does, highly.

2038. Have you any suggestion to make as to the class of offence that should be tryable by the magistrates?

I am not very conversant with the scope of the Summary Jurisdiction Act, but I believe magistrates cannot dispose of any case where life has at any time been endangered by an assault. I would give them power in that case, when the person injured was convalescent, and the life was no longer in danger.

2039. Do you think it would be desirable for these reasons to increase the amount of punishments which the magistrates are able to impose; or merely to enable them to pass the sentences which they now can pass, but for offences which are now excluded from their jurisdiction?

I think the latter proposition would be the best one Without extending the amount of punishment, I would give them power or I would be very glad to see them get power to deal with a larger number of offences in addition to those which they can at present deal with summarily.

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2040. When you are speaking of magistrates, do you mean local magistrates, or stipendiary magistrates?
The petty sessions magistrates; they sit together.

2041. You make that recommendation upon the ground that what is wanted is rather promptitude and certainty of punishment than great severity?
Promptitude and certainty of punishment; the magistrates at petty sessions administer the law, as I believe, fairly and impartially, and if the accused person deserves to be punished, he is punished.

2042. *Lord President.*] In the remarks you have made about the juries, you do not complain of the intelligence of the jurors?
I did not name it, but there are a large proportion of the rural farmers both in Clare and Kerry, who do not possess intelligence sufficient to investigate many of the cases necessarily entrusted to them.

2043. That would apply to all cases brought before them, as well as those where you say juries break down, namely, in cases of outrage against the person?
There are other cases, such as forgery and perjury; those are cases the investigation of which requires highly intelligent people.

2044. And you think the juries in Clare and Kerry are deficient in intelligence for those cases?
Many of them are. In Kerry out of a population of 197,000, there are 12,000 who cannot speak a word of English.

2045. In neither of those counties are there any large towns. I suppose Ennis is not a large town?
Yes, Ennis is a large town; there are 6,500 inhabitants in Ennis. Tralee is a large town; there are 9,500 inhabitants in Tralee.

2046. You call those large towns, but are the class of jurors different in those towns to what they are in the counties?
They are infinitely more intelligent.

2047. Are they influenced by motives such as fear or sympathy?
I think they would be influenced, not from fear of any physical or bodily injury, but the shopkeepers are afraid of being as it were "Boycotted," and that they would lose their trade or business.

2048. There is a very intimate sympathy between the shopkeepers in Tralee and Ennis, and the agricultural population of the counties?
That is the relation; they rely upon the rural population outside to support them.

2049. You are not able to rely upon jurors of this particular class from Ennis or Tralee, any more than you can from the county?
I think that that canvassing of jurors originated in Kerry, at Tralee; the thing was started there, and it has become, as I believe, a system, although (I believe it was when your Lordship was viceroy in Ireland), the Government allowed me to try and get at the bottom of it, and I am bound to say that I failed to detect it, although it did not in the slightest degree shake my opinion that it was being carried on.

2050. Then canvassing of jurors took place before the present agitation?
It did.

2051. In what year was that case which you said you tried to investigate and get to the bottom of?
I think it was about three years ago now, or it may be three and a quarter or four years ago.

2052. Before Lord O'Hagan's Act passed, did juries invariably perform their duties satisfactorily?
Invariably.

2053. In all cases, whether cases of outrage against the person or otherwise?
In all cases.

2054. Even in times of excitement like the Fenian outrage?
I think so; I speak of Clare and Kerry.

2055. You

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2055. You said that if you now had power to select a jury, you would not be able to get a satisfactory one, and one that would do their duty; I think your remark applied to the present system, and not if you changed it, so as to get the grand jurors on the ordinary panel?
I am speaking of the existing state of things.

2056. Under the existing state of things, no change at all, whether of altering the challenges or putting a higher class of jurors on, would give you a satisfactory jury, you think?
I should not go that length. I think if the special jury which I ventured to suggest to the Committee were tried, there would be a vast improvement upon the present jurors at any rate.

2057. Would the infusion of the gentlemen who serve on the grand jury now, be sufficient to secure an impartial jury?
That embraces 23 names; the grand jurors would carry great weight upon the jury they served upon. The farming people know them, and are well aware of their impartiality and uprightness; and would be well disposed, as I think, to listen to their arguments when they retired to their own room, and as it were to follow them.

2058 You stated that you would have a different panel for the assizes and quarter sessions?
I should.

2059. Are there not some very important cases tried at quarter sessions?
There are important cases, but not very important cases; and I would add the suggestion then that there should be a direction to the resident or local magistrates, that any cases which assumed an important aspect should go to the assizes; in fact at the present time the Sessional Crown Solicitor (for there are Assize Crown Solicitors and Sessional Crown Solicitors), as a rule submits any case of an important character to the Attorney General, with the view to his deciding whether it should not be transferred to the assizes from the sessions.

2060. Would not there be a certain number of important cases left at the quarter sessions even after that?
There would be very little difficulty in submitting every case to the Attorney General. Every assize case now, as a matter of course, is submitted to him before it is prosecuted; and there would be no practical difficulty in submitting the sessional cases to him; every person familiar with looking at the papers connected with criminal cases can see what is in them at a glance.

2061. Have you any experience of cases where there has been a change of venue from your two counties to Dublin or any other place?
I have followed the cases at the winter assizes for the last three years to Cork and Limerick.

2062. Has that had any effect in producing better jurors?
The Cork juries are admirable. I daresay there are none better in Her Majesty's dominions. They are highly intelligent people, but they failed to vindicate the law where anything connected with agrarian outrage was involved at the last assizes.

2063. They failed there as they did in other places?
They failed in Cork as completely as they would have failed at Ennis and Tralee.

2064. Lord *Emly*.] Are you speaking of the city of Cork?
I am. It is the city of Cork jurors that I regard as so intelligent.

2065. *Lord President*.] There were some cases connected with agrarianism, were there not?
There were.

2066. More than one?
Several.

2067. Did they all fail?
They all failed.

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2068. Contrary to the evidence?
Directly against the evidence.

2069 Lord *Inchiquin.*] Your recommendation, as I understand it, is that at the assizes all these special cases of assault in connection with land should be tried by special jurors?
Yes, that a list of jurors, or a panel of jurors, should be prepared expressly for criminal trials at the assizes.

2070. Would you have a special number of special jurors?
I think so.

2071. Would you have sufficient to prevent a man being summoned more than once in a year, say?
Your Lordship's panel in Clare averages about 140 names for each assizes. There are 230 rated special jurors on the jury list at present in Clare, and there is identically the same number in Kerry, 230. I think you have something like 140 magistrates in Clare, and if all sons of magistrates, whether rated or not, residing in their parent's house, all the adult sons of the clergy, whether rated or not, all retired officers, whether rated or not, and I would go so far as to say militia officers, unless they were for the time being out for training, I would say that they should all be obliged to serve; these added to rated jurors would swell the numbers considerably.

2072. So that you would get in that way a perfectly sufficient number?
I think we should get a sufficient number to prevent jurors being harassed by undue attendance, and then if my suggestion was given effect to, they would be relieved from quarter sessions, which are exceedingly inconvenient to attend.

2073. But some of those important cases which you allude to are tried at quarter sessions, are they not?
Yes, but I venture to suggest that all quarter sessions cases should be submitted henceforward to the Attorney General.

2074. That is to say criminal cases of this kind?
All criminal cases returned for trial at the quarter sessions, I should suggest should be submitted to the Attorney General in the same manner as the assize cases are now, and have been in the past. No case is ever prosecuted by the Crown Solicitor without the fiat of the Attorney General, who has read the case and seen whether there is a *primâ facie* case to try them upon or not. That is why I should state that the functions of the grand jury are virtually needless in Ireland.

2075. Do you think, if this alteration were made, that it would produce satisfactory results at the present time. I am talking of the special time of the present agitation?
I think it would vastly improve it. The panic that has been created seemingly in the minds of jurors extends to the highest class of juror in Munster, such as those at the Cork assizes; they were just as much panic stricken as the smallest farmer that would come into Ennis.

2076. Do you think there has been a great alteration since this agitation begun in the conduct of the jurors, or do you think the juries acted pretty much as they are doing at present before this agitation commenced?
No.

2077. It has been worse, you think?
Where there is the slightest tinge of an agrarian complexion in a case since this agitation arose, a conviction appeared hopeless, and was hopeless.

2078. For those reasons some of the witnesses who have appeared here have suggested that there should be a special commission of judges to try cases, at any rate for some time, subject to the discretion of the Attorney General?
Where it would appear to the Government to be beyond all doubt that the law had become completely a dead letter, I presume an exceptional remedy would be applied to it.

2079. But

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2079. But it is practically a dead letter, in your opinion, at present, is it not?

It is practically a dead letter at present; where there is the slightest tinge of agrarian complexion in a case, I regard it as a loss of time, and courting a defeat to present it to the juries in either of the counties I am officially connected with.

2080. As a rule every respectable well-dressed man who appears as a juryman is invariably challenged, is he not?

Invariably so; in Tralee, I have heard it stated by a legal gentleman conducting a defence that the test of respectability upon which he should act would be the wearing of a neckcloth.

2081. Even if you can stop a prisoner challenging in this way, you think that at the present time you would not be able to get a satisfactory jury, even if the power of peremptory challenge were done away with?

With the panel as at present constituted, I could not.

2082. You think the challenges would exhaust all the higher class of jurymen, the proportion of which you have already stated?

Yes, there would be six challenges in a misdemeanour case. As a rule in the counties I am connected with, of late years where it is feasible to do it, the indictment is for a misdemeanour charge.

2083. You said you approved of increasing the power of magistrates at petty sessions?

I do approve of it.

2084. Do you mean to confer power upon local magistrates generally, or do you prefer that those powers should be conferred upon the resident magistrates?

On the magistrates of petty sessions.

2085. We had a witness before us who said he thought it advisable if the powers of petty sessions were increased, that those additional powers should be given to the resident magistrates?

I do not concur in that view.

2086. Do you not think, even if those powers were given, unless there was some restriction upon the power of appeal in nearly all serious cases, no matter what the judgment of the magistrates might be, there would be an appeal?

Yes; but then it is an appeal to the next Quarter Sessions, virtually the same tribunal. They are assisted by the County Court Judge, but still the vote of each magistrate is just as strong as the County Court Judge's vote.

2087. What I mean is this: if the magistrates at Petty Sessions had even the powers you wish to confer upon them, they would be practically nullified, because the prisoner would invariably appeal?

No, it would not nullify them, because the appeal would be tried within a short time at all times; it would go to the next Quarter Sessions, where the same magistrates would preside.

2088. I have known cases, and I daresay you have also, where serious cases in some instances have been carried to appeal, and where, owing to the system of appeal from one tribunal to another, the prisoners practically got off without any punishment whatever?

He has the chance, no doubt, of some little flaw or mistake in the recognizances or appeal bonds, or some documents that have to be prepared for the appeal; but still, as far as my observation has gone, the result of an appeal was usually to uphold the conviction below.

2089. Have you found great difficulty in getting witnesses at the present time?

No.

2090. You have always found the witnesses ready to come forward?

They are quite ready to come forward, but they are reticent when they do come forward.

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2091. Still you would not find fault with the witnesses generally. You have generally been able to get sufficient evidence to put before a jury?

There is always one aggrieved side in a criminal prosecution, and the aggrieved party and his immediate friends are ready to come out as strong as they can, except in agrarian cases.

2092. What I mean is this: it has been suggested to us here that a great deal of the failure of justice is not owing to the juries, but owing to witnesses being intimidated, and sufficient evidence not being forthcoming to convict?

An outsider at the present time, as far as my observation and my experience extends, will tell nothing to assist the vindication of the law. The injured man as a rule will tell who hurt him, or the immediate members of his family, if they know it, will tell who hurt him, but no outsider will tell who hurt the prosecutor if he knows. Even if he were looking at the outrage committed he will not tell; and it is a rule now for witnesses to say, "I saw such-and-such a thing done; I was there; I am not able to identify." There would be evidence overwhelming that that witness was there, and had opportunities of seeing all about it; but he will say that he did not know anyone; that it was dark, or that the prisoner had his side face turned to him, or something of that kind. At all events, he does not identify anyone; that is invariably the case.

2093. You recollect the case of a threatening notice that appeared last winter?

Yes; at Tulla. Your Lordship is probably alluding to where the man was caught putting up the notice.

2094. Yes?

I recollect that.

2095. Were you satisfied with that case having been put fairly before the jury; were you engaged in the case yourself?

I prosecuted it in the first instance at the winter assizes at Cork; and it seemed to me that it was proved to demonstration; but the jury disagreed. Then it was brought home and tried at the last assizes; there was a second trial at Clare, and the man was acquitted. I was not present at the trial in Clare, because both judges were at the moment sitting for the trial of criminals, and my place was in the senior judge's court, so that I was not present at that particular trial; but there were some little circumstances which weakened the case, as compared with the Cork one, as to the manner in which it was presented; one of the witnesses had got into trouble in the meantime.

2096. It was considered a notorious failure of justice, was it not?

Manifestly so. As I say it was proved at Cork in my presence to demonstration, in my opinion.

2097. Lord *Emly.*] Was not that the case which Mr. Justice Barry tried, and as to which he said he was satisfied that there was no reason to complain of the verdict?

Mr. Justice Barry tried it in Clare; that is the trial at which I was not present.

2098. As regards the class, what would be the division do you suppose of the special jury panel upon which you have been proposing that the grand jurors should act, and the sons of magistrates and various other people whom you have mentioned?

And farmers rated up to 100 *l.* in Clare, and 70 *l.* in Kerry, which should be an occupation rating.

2099. What do you suppose would be the division as to the classes of such a panel as that?

The farmers in that instance would, as a rule, come up to the position which your Lordships understand of gentlemen farmers, men who are rubbing shoulders frequently with the gentry in the Poor Law Board-room, and at presentment sessions, and other places, and men who would wish, as I think, to stand well and have the reputation of being impartial men, and sufficiently independently minded men, to act upon evidence.

2100. Would

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2100. Would you abridge the right of the Crown as to ordering jurors to stand by?

I can state that I believe the power is never capriciously exercised; I have never known an instance of its being capriciously exercised; I think the Government would not tolerate for a moment an improper exercise of the right of ordering jurors to stand by on the part of any Crown solicitor.

2101. I have no doubt it is not exercised capriciously, but it has been shown before this Committee that it has been exercised so largely that 60 or 80 have been desired sometimes to stand by; have you ever known such a case as that?

I think at the winter assizes at Cork, in one case I ordered a great many, probably 26, jurors to stand by, but it had no effect upon the result.

2102. Earl of *Derby.*] In reference to what you have said as to the peremptory challenges, supposing that public opinion made it impossible to withdraw the right of peremptory challenge altogether, do you think that any appreciable advantage would be gained by considerably reducing the number of challenges allowed?

The number of challenges allowed at present in misdemeanour cases is six.

2103. What is it in felonies?

In felonies it is 20; in fact it is never fully exercised. Both in Clare and Kerry the panel is so denuded of anything like independent-minded men, before they reach 20, that there is no occasion to exercise the right to the full extent.

2104. Then you do not think that any material advantage would be gained by reducing the number of peremptory challenges allowed in cases of felony to the same, or nearly the same, number as that which is allowed in cases of misdemeanour?

Doubtless it would be going in the right direction, because it would be diminishing the power, which completely emasculates the panel.

2105. I suppose we may take it that the power of peremptory challenge is exercised on behalf of the prisoner in such a way as to remove from the jury any man who is likely to be independent and intelligent?

That is so; that is the aim of it, as far as I have observed.

2106. Would you be content to retain the limitation of the power of peremptory challenge by sacrificing on the other hand some part of the right which the Crown now exercises of telling jurors to stand by?

I should.

2107. You think it would be a gain, upon the whole, if the number on both sides were diminished?

I think it would be a most important gain if the peremptory right of challenge were diminished, as I believe, and as far as my observation and experience goes, the power of the Crown of ordering jurors to stand by has not been improperly used.

2108. In cases where you have known a manifest failure of justice to occur, does it generally take the form of the jury disagreeing, or an absolute acquittal against evidence?

If by accident, from inattention on the part of the accused person, or those acting for him, an independent-minded juror remains on the jury (and that happens not unfrequently where they are talking or consulting about something or other, and the juror is called and sworn before he is stopped; I have known that happen again and again, indeed so often that I could not count it), then there is a disagreement. If they are attentive, and exercise their right of challenge judiciously, they take off every independent-minded man, and the result is an acquittal wholly irrespective of evidence

2109. I put the question for this reason: we have had discussions here and elsewhere as to the expediency of accepting the verdict of a majority of the jury; it is contended, on the one hand, that in that way you would lessen the number of cases in which a single obstinate juryman defeats the ends of justice;

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and it is contended, on the other side, that the failures of justice would be more frequent than they are now, because where, under the present system, there is a disagreement, and therefore a new trial possible, there would be an absolute acquittal if the majority could return a verdict, and therefore a final failure of justice, and not one that would be merely temporary; what is your opinion upon that point?

I believe that with the juries as at present constituted, if the majority were able to bring in a verdict, there would never in Clare and Kerry be a conviction again in any case of outrage against the person.

2110. Then, in your judgment, the only thing to be done is to modify the constitution of the jury?

Precisely.

2111. As I understand you, you put it in this way: that at present the arrangement or the organisation of the grand jury practically operates to exclude the higher classes from common juries?

Twenty-three of the number are on the grand jury, and they are excluded.

2112. And you think, by the mixture of that element which is at present excluded, it would be possible to obtain convictions where the trials now fail?

I think it would greatly improve the constitution of the panel. I venture to say it would require other elements to make it an independent-minded list; that is, other elements besides bringing in the 23 grand jurors.

2113. Have you found a willingness or a good disposition on the part of the well-to-do classes to serve, or is there a strong aversion to take the trouble?

They avoid it and shirk it in every way they possibly can, as a rule.

2114. In regard to enlarging the summary power of the magistrates, is it possible, without any alteration in the law, when you are considering on what charge a man should be prosecuted, to prosecute him for a minor offence which is included in the act he has done, and so obtain a summary conviction, instead of sending him on a graver charge before a jury?

In a case that can be disposed of at petty sessions by the magistrates, as a rule the law is carried out. When a man goes before a jury and is indicted, in my opinion in the two counties that I am connected with officially, the law fails with respect to outrages against the person.

2115. Then I suppose we may take it that the authorities will always send a case to be summarily disposed of if it is legally in their power to do so, rather than send it before a jury?

Yes, surely, until a change is made in the existing jury laws.

2116. And you would desire that their power to do so should be enlarged?

Yes, the class of cases which they can adjudicate upon should be increased. I do not for a moment suggest that their powers of punishing should be enlarged.

2117. But you think that there should be the option with the authorities of sending the cases before the magistrates, although the punishment would be lighter, rather than run the risk of total failure by sending it before a jury?

Yes; if I may call your Lordship's attention to it, there is an offence which unfortunately prevails a good deal at present in Ireland known as "Boycotting." In that offence it is the right of the accused person to say, "I require to be sent on and tried by indictment;" that is his right. If he had not that right, I believe that Boycotting would be put down in a fortnight.

2118. We had very strong evidence given by one witness as to the beneficial effect of comparatively light penalties if they were certain to be imposed; do you agree with that?

I do; I entirely concur in that.

2119. Even if only a month's imprisonment or some such sentence could be given for an offence deserving of a much heavier penalty, yet you would prefer to have the alternative of sending the prisoner for trial where he could only receive

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receive a lighter sentence, but where it would be certain that he would be sentenced?

Unquestionably.

2120. Lord *Tyrone.*] I understood you to say that you would add to the jury panel the sons of magistrates and clergymen, and various others?

Yes, and retired naval and military officers, and I would say the militia officers, when not actually engaged in training.

2121. Do you mean all the sons who have come of age, or only one son of each of the gentlemen you have named?

All adult sons.

2122. By so doing, you think you would get a better jury panel, do you?

You would get a considerable increase of independent minded intelligence on the panel; you would get a number of men whom no person would dream of trying to get at, either to terrify them or to wheedle them into acting against evidence.

The Witness is directed to withdraw.

Mr. Serjeant O'HAGAN, is called in; and Examined, as follows:

2123. *Chairman.*] You have, I believe, been Chairman for the County of Clare?

Yes, for six years.

2124. Between what dates?

Between 1872 and 1878.

2125. And you are now, I believe, practising in your profession?

Yes; I have resigned my chairmanship, and am simply practising in the Court of Chancery.

2126. What special opportunities have you had of studying the operation of the Irish jury system?

Solely the opportunities afforded by my experience of those six years in Clare; that is to say, of the juries at quarter sessions. My appointment to the county of Clare coincided with the coming into operation of Lord O'Hagan's Act, so that I had no opportunity of observing the previous operation of the jury laws. I had been in other counties previously, first in the county of Westmeath, and then in the county of Leitrim.

2127. During those six years were you, on the whole, satisfied with the conduct of the common juries, so far as it came under your notice?

I was, on the whole.

2128. And should you say that with reference to all classes of cases, or do you make any exception?

I was satisfied, on the whole. I will mention what the nature of my experience was; when the jurors were first summoned under Lord O'Hagan's Act, very many of them were entirely new to the duties of jurors, and some of them were men of comparatively slender education; they accordingly required to be treated with a good deal of patience, and to be instructed in their duties; I set myself on every proper occasion to instruct them; I found them, upon the whole, very docile, and rarely going astray in any case of ordinary crime; they were likely, from their absence of intelligence and experience, to be led astray, even in a case of ordinary crime, if there were an advocate for the prisoner who put the usual commonplaces to them about the benefit of the doubt, the prisoner's mouth being closed, and similar topics; but if pains were taken with them to explain what is evidence sufficient for conviction, and the nature of the evidence, I found that they had great reliance upon the judge who addressed them, and that they generally went right. Then there was another class of cases, namely, cases of personal violence; at that time the county of Clare was, upon the whole, very free from any agrarian offences, but there were the

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ordinary faction fights, and breaking of one another's heads, going home from a fair or market; and in those cases there would generally be cross indictments, and both parties would be brought up before the jury to be tried. No doubt, in cases of that kind, there was not the same disposition on the part of the jury to convict as there was in the other. There was more or less of feeling, that inasmuch as the accused were not persons of the criminal class, and had not been guilty of stealing, but of a little violence in their drink, it would be well to let them off if possible; so that, in those cases, greater pains had to be taken with the juries; but even in those cases I generally got them to do what was right, by explaining to them very fully the nature of the case, and the nature of their duties. I have been trying to remember any case in which I had occasion to be very angry with a jury, and I only remember one. It was a case where a policeman had been badly beaten in the town of Ennis, and I thought the evidence quite sufficient to convict, but the jury acquitted the accused. With the exception of that case I hardly remember any in which the jury went palpably astray. There was one place in which Crown sessions were abolished afterwards, in which juries were more disposed to go astray. No criminal business is now held there.

2129. Do you remember any other cases like this police case to which you refer, where the jury had an opportunity of showing whether it had strong sympathies for or against the law?

I think, in every case of personal violence there was that opportunity, because in every case of personal violence the feeling was that the persons upon their trial were not persons of the ordinary criminal class, but farmers like themselves, who had got into a quarrel and broken one another's heads; therefore there was the same opportunity, but I generally found when a case was put to them very strongly, and clearly, they were quite ready to do what was right.

2130. In those ordinary cases of violence I rather infer from what you say, that the jury probably felt that there was not a great deal to choose between the prosecution and the defence, and that a rough and ready sort of justice would be done by acquitting the persons who happened to be accused?

They generally convicted even in such cases, as I remember.

2131. I think I understood your earlier answer to be that in assault cases you could not depend upon the juries?

No; what I said was, that in assault cases there was somewhat more difficulty, that is to say, that I think you had to be more express in telling the jury what their duty was, and how evil a thing it would be if they found contrary to the evidence, notwithstanding that they might think the matter a comparatively venial one; but I really found them upon the whole a docile body of men, and where the judge took pains with them, they were disposed to do what was right.

2132. The worst thing you could find to say against them would be that they were ready to avail themselves of a loophole, when it was suggested by an ingenious advocate that such a loophole existed?

Yes; and they being without trained experience as jurors, would naturally have followed the advocate, I think, unless the judge took some pains to displace the impression made upon them by telling them plainly what the nature of the doubt was upon which they were competent to act, and what the nature of the case was upon which they were bound to convict according to their consciences and oaths.

2133. What is your recollection of the class from which these juries of which you are speaking was generally constituted?

Farmers generally and shopkeepers of Ennis.

2134. You were in the room just now when a witness gave evidence pointing to the conclusion that there was a very small minority of members of the more intelligent and educated class upon the jury lists, and that for various reasons the members of that small minority were not to be found often serving upon juries; does your impression agree with that?

Yes;

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Yes; I think I rarely found a man of a superior class upon the common juries; at quarter sessions the grand jury was composed of the special jury class, and accordingly I had before me in the persons of the grand jury at quarter sessions, members of the special jury list; but the common juries were generally taken from the common jury panel.

2135. What you have said has referred to the county of Clare?
Yes.

2136. Does it extend to any other parts of Ireland in which you have had personal experience?
I had been in Leitrim and Westmeath prior to that, but that was before the passing of Lord O'Hagan's Act, and of course under the old system.

2137. But your experience of the working of Lord O'Hagan's Act is limited to those six years in the county of Clare?
Entirely.

2138. Then I presume we may take it upon the whole you were not dissatisfied with the state of things which you found there?
No; I think it of the greatest possible importance that men of the class from which those jurors were taken should be educated into a knowledge of the British constitution, which they could be in no way so well as by having to act as jurors, meeting other men superior to themselves; coming face to face with the judge, and being instructed in their duties; and I thought I saw a marked improvement even in the six years I was there in their intelligence and knowledge of their business. In that way I consider that in ordinary times Lord O'Hagan's Act has worked admirably. Of course the present times are entirely exceptional, but it is a very difficult problem how to deal with a condition of things like the present under any jury system.

2139. Have you had any opportunity of forming a judgment with regard to the extent to which the jury system has failed under the exceptional circumstances of the present time?
No more than as a lawyer and a member of the public, reading and knowing what is going on; I have not personally had any opportunity, my practice as a lawyer before juries has not been since my retirement from the chairmanship.

2140. Lord *Inchiquin.*] Your practice is in the Chancery Court, is it not?
Entirely, except that occasionally questions of title arise in the Common Law Courts, and then I may go there to argue those questions.

2141. How long have you left Clare now?
Three years.

2142. Then you have had really no experience of the jury system during any part of the recent agitation?
None as a practitioner.

2143. But up to the time you left, you were perfectly satisfied with the findings of the juries?
I was, on the whole, satisfied, and I do not think that any failures of justice that occurred were more than would occur under any system.

2144. Have you any ideas of your own as to what ought to be done at the present time, because there seems to be a failure of justice at present?
Since you ask me that question, I am bound to say I have; I think that the true remedy, where the state of feeling in a particular locality prevents juries from doing their duty, lies in a change of venue. I heard the evidence given by Mr. Morphy, and I am bound to say it does not strike me that you would gain much by having a class of jurors composed of the fancy qualifications he mentioned, because you will always have in times like the present, when there is a strong agitation pervading the country and acting upon every person, a certain number of the jury influenced by terror or sympathy, and that of course will operate to prevent justice being done; so that, in the case of a serious crime, if there be a strong feeling pervading the county to the defeat

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defeat of justice, it appears to me the plain remedy is to change the venue, and try the case in a place where those feelings do not prevail.

2145. You do not think the superior class of jurors he recommended would be sufficiently independent at the present time?
I do not.

2146. There would not be very much use in changing the venue to any other place, for instance, in the south of Ireland?
No, but you might change it to the central counties, or to Dublin, or to the north of Ireland, if you pleased.

2147. There would be very great expense involved in that, would there not?
Yes; but the question arises whether considerations of expense ought to weigh in a matter of so much importance as the administration of justice.

2148. Lord *Emly.*] Is not that expense borne by the Crown?
That expense is borne by the Crown.

2149. I mean the prisoner's expenses?
Yes, certainly; and very properly.

2150. Lord *Inchiquin.*] You heard the recommendations about increasing the powers of magistrates at petty sessions?
Yes.

2151. Do you agree with what Mr. Morphy said about that?
To some extent that might be done, but I am bound to say that my experience as Chairman of Quarter Sessions was, that the magistrates much too seldom exercised the jurisdiction that they had. I had constantly to complain that cases were sent on to be tried before juries that ought to have been disposed of by the magistrates.

2152. There is sometimes a difficulty in magistrates dealing with those cases on the ground that they are too important, and that the punishment they are empowered to inflict is not sufficient for them?
They have power to inflict two months' imprisonment with hard labour, which in ordinary cases is quite sufficient, and in certain exceptional cases they can give six months.

2153. But has not the prisoner power to appeal?
If he appeals he is tried by magistrates, assisted by the Chairman. There are, no doubt, technical questions which may be raised there. The frequency of such technical questions arises, I think, from another failure in our present system. I do not like to use harsh language, but it is, I think, often due to the petty sessions clerks not drawing up the convictions in proper form. There is a constant failure of justice from that cause.

2154. The petty sessions clerks are not up to the work as a rule?
That is my experience. I do not like to give offence to anybody, but I think there ought to be great pains taken with the appointment of petty sessions clerks. It should be borne in mind that it is no easy matter for an unprofessional person to draw up a conviction with that accuracy and particularity which the law requires.

2155. *Lord President.*] The petty sessions clerks are not always professional men, are they?
Not in the least.

2156. You know a great many cases where they are not, I suppose?
I know a great many cases where they are not. I think it is a very rare case indeed in which you find the petty sessions clerk a professional man.

2157. Lord *Inchiquin.*] Do you know who appoints them?
They are appointed by the magistrates.

2158. *Lord President.*] By the magistrates of divisions?
By the magistrates of the district.

2159. Lord

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2159. Lord *Inchiquin.*] I suppose, like everything else, those appointments are canvassed for beforehand?

Of course. I was asked myself, in the case of the appointment of a petty sessions clerk lately, to apply to one judge who was to apply to a second judge, who was to use his influence with a magistrate, who was to vote upon the appointment.

2160. Lord *Ardilaun.*] Would the present emoluments of the petty sessions clerks enable the magistrates to appoint a better class of men?

I think not. The whole system of petty sessions clerks requires to be revised, and it is one of the great wants in the administration of justice now.

2161. Then it is not so much the fault of the magistrates as of the system, you think?

I think so; I think the emoluments are not sufficient.

2162. *Lord President.*] Are there a sufficient number of solicitors in each petty sessional division, or near the petty sessional division, to furnish clerks to the petty sessions?

I do not think there are, and I do not think the place is one that solicitors can very well take; but if you had a competitive examination for them, that examination not merely extending to ordinary matters of education, but distinctly to the knowledge of their own duties and the Acts of Parliament, and the law which they have to administer, I think that would be a most excellent change.

2163. Why should not solicitors take the place?

Because they would have to attend every fortnight at Petty Sessions, occupying their whole day there, and unless it were made very well worth their while they would not do it. It would debar them from practising either at Petty Sessions or on appeals from Petty Sessions.

2164. You are aware that in England they are almost invariably solicitors, are you not?

That may be so, but I do not know how they are paid in England. I do not think the pay in Ireland would remunerate them.

2165. Lord *Inchiquin.*] Were you more satisfied with the jurors in those counties where you were chairman before you went to Clare?

No, I was not; in Westmeath especially. Westmeath was always rife with Ribbonism.

2166. That was before Lord O'Hagan's Act?

That was before Lord O'Hagan's Act altogether.

2167. You were not satisfied?

No, I was not.

2168. Why; did you think the discretion of the sheriff was not properly exercised?

Perhaps the sheriff may not have been in fault in any way; but I know I had often reason to be dissatisfied with the administration of justice in Westmeath, on the ground I have suggested. It was impossible to keep certain feelings out of the jury box.

2169. That was on account of this special conspiracy in Westmeath?

Quite so.

2170. I suppose there were nearly always Ribbonmen upon the jury?

I should not say that; but at all events it was thought that it was difficult to keep those sympathies altogether out of the jury box.

2171. You were in the room when evidence was given about peremptory challenge just now. Do you think it would be advisable to limit the peremptory challenge on the part of the prisoner?

I think in minor offences, or offences involving a sentence short of penal servitude for life, they might be limited; but it may be a lawyer's superstition which causes me to say that I would shrink from depriving a prisoner of his right of 20 challenges in any case involving life.

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2172. In other cases you would limit it to a certain extent?
I think it might be limited.

2173. To what extent would you limit it?
To half, say. I may add there is one suggestion of Mr. Morphy's in which I entirely concur; that is the abolition of grand juries at quarter sessions. They appear to me to be entirely useless.

2174. He said not only at the quarter sessions, but at the assizes too, as I understand?
That is a somewhat larger question, and the fiscal and other business of grand juries raises a serious question as to their abolition; but upon principle I think that when magistrates have carefully considered a case, and returned the accused person for trial, he might be put upon his trial before the petty jury without going through the intermediate course.

2175. That would give you a better class of men?
It would; it would set 23 men free.

2176. *Lord Privy Seal.*] I do not think you were asked whether you ever had agrarian cases to deal with in Clare; you spoke about assaults and faction fights, and that kind of thing; but had you ever any cases that might be called agrarian cases?
No; serious agrarian cases were always sent by the Attorney General to the assizes; any violent agrarian assault never came before the quarter sessions. But, indeed, during the time I was in Clare, it was, upon the whole, very quiet, and the relations of landlords and tenants were, upon the whole, most satisfactory. There was a little disturbance in the east part of the county; certain landlords (not of the larger class) did not get on well with their tenants, but over the great mass of the county the relations were excellent.

2177. Do you remember whether the raising of the rating qualification had any perceptible effect?
I think it had. I think the jurors after 1876 were improved; they were more intelligent.

2178. Do you think it would admit of being still raised somewhat higher?
I do not see any use in it. I think the present common jury system works very well in ordinary times, and under ordinary circumstances, but under circumstances like the present I do not conceive that any raising of the qualification would be of the slightest use.

2179. You think that in the present state of things, which we hope is exceptional, no such minor remedy as that would be of the least use?
Such is my distinct opinion.

2180. *Chairman.*] You received favourably, on the whole, the suggestion that the summary jurisdiction of the magistrates might be extended; should you apply that to the jurisdiction of the local magistrates merely, or were you speaking of the local magistrates acting with the stipendiary magistrates?
I think it might be desirable, if thought right, to extend the jurisdiction of the magistrates, and that the stipendiary magistrate should act with them, but I have by no means a very fixed opinion as to the extent to which the jurisdiction might be extended. They have at present a tolerably extended jurisdiction; they can act in all cases of assault, and most of the cases that come before them would be assaults, and they can give sentences up to two months and sometimes to six months' imprisonment with hard labour. That, in my opinion, would be a most useful jurisdiction if exercised, but my complaint is that it is not exercised.

2181. Earl of *Derby.*] Speaking generally, do you think that they dislike the responsibility, or to what cause do you attribute that?
I think they shrink from incurring the responsibility, and it may arise to some extent from their connection as landlords or otherwise with the persons accused. If anything of that kind arose, I fancy there would be a consent among the magistrates themselves to send the case on to the quarter sessions.

2182. *Chairman.*]

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2182. *Chairman.*] That would be a very natural feeling, would it not, in a case which had its origin in some agrarian matter?
It would.

2183. The bench being composed mostly of persons of the landlord class?
Precisely so; but that is a feeling that I think they ought to get over. I entirely concur in everything that has been said as to the expediency of speedy and certain and summary punishment, however light.

2184. Lord *Ardilaun.*] Do you not think the present state of the country affects the magistrates also, and that they feel that their decisions are not respected?
It must of course more or less affect them.

The Witness is directed to withdraw.

MR. ROBERT VERE O'BRIEN, is called in; and Examined, as follows:

2185. *Chairman.*] You are, I believe, Clerk of the Peace for the County of Clare?
Yes.

2186. How long have you held that office?
Since 1862. I may mention that I have only personally performed the duties since the year 1872; before that I performed them by deputy.

2187. Have you formed any opinion as to the operation of the present jury laws in Ireland?
I think since the qualification was put at the present limit (which is now in Clare 40 *l.* for the common juror) they have performed their duties up to the last year or so, very fairly and very well.

2188. Was any change made in county Clare with regard to the rating qualification for house property by the Act of 1876?
Yes, the Common Jury Act originally said nothing whatever about the house, I think; it was only 20 *l.* for a common juror.

2189 For land and tenements, you mean?
Yes; that was raised to 40 *l.* for land and tenements, and 10 *l.* for houses. It is now 10 *l.* for a house in the town, and 40 *l.* qualification for land.

2190. The 10 *l.* rating house qualification was a new introduction?
Yes.

2191. What class of persons has that qualification admitted?
It has brought in a class of shopkeepers in the country towns.

2192. You said that you were generally satisfied with regard to the conduct of the juries up to last year; since that time have you been satisfied?
I may mention that in the Quarter Sessions Court, in which my duties lie, the juries have found, in my opinion, as a rule, very just verdicts in the class of cases that have come there; but as Serjeant O'Hagan said just now, the Attorney General has carefully excluded, or somebody has carefully excluded, all cases which bore in the slightest degree upon the agrarian question; they were not sent for trial to the Quarter Sessions Court. Why I say that is, that I am frequently in the Assize Court, and have a good deal of experience of what is taking place there.

2193. Then have you yourself any personal experience of the conduct of juries in agrarian cases?
Not officially; but I have personal experience. I have seen it frequently in the Assize Courts in Clare.

2194. Can you state to the Committee what the result of your experience is?
I think

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I think the present jurors will in no agrarian case convict a prisoner, however strong the evidence may be.

2195. Is that owing to fear, or sympathy with the accused?
I should hope it is owing to fear. I think there is certainly very great danger that a juror who found an agrarian offender guilty would suffer in some way or other, either in person or property.

2196. You think it is due to fear of the consequences, rather than sympathy?
I think, as a general rule, it is. I think the class of men we get as jurors in Clare are generally speaking a good class. The 40 *l.* rating qualification represents a rather good class of farmers; and I think, as a rule, they are anxious to do their duty; but in isolated parts of the country they are subject to evil influences, and consequent intimidation.

2197. You see no reason to complain of the intelligence of the jurors?
No, I think not; I think they are sufficiently intelligent.

2198. Does the system of alphabetical rotation of service operate satisfactorily?
I have never heard complaints about it; but it seems to me that it must operate most unsatisfactorily; and, if your Lordships will allow me, I will just take, as an illustration, the last Clare panel, which is a curiosity in its way, owing to their having apparently come to the end of the letters. Out of 146 names, 52 begin with the letter M, which is the letter which begins the name of the largest number of jurors in Clare, and there were no less than 19 Molonys upon that panel.

2199. Then when all the other letters are exhausted, the panel is called from the unexhausted names which remain, I suppose; but perhaps you had better state what happens?
What happens is, that there is a general juror's list made out of all persons rated above 40 *l.* That general juror's list is taken; they take the first in A, the first in B, the first in C, and so on. And then they take the second in A, the second in B, the second in C; and then the third in A, the third in B, the third in C, and so on. Probably there are very few beginning with A in Clare, and the letter A would be the first exhausted. You would exhaust all the letters commencing names that were not common names, and ultimately come down to the M's and the C's and the K's, which would probably represent the majority of the jurors in Clare.

2200. Earl of *Derby.*] You spoke of a great number of persons whose names begin with the same letter, and who would therefore be expected to be favourable to any prisoner of the same name who came before him. Do you mean that the same particular name proves that those who bear it are all of the same family?
I have never heard any complaint upon the subject, but I wonder that there has not been more difficulty about it, because one panel may contain an enormous preponderance of one particular name under that system.

2201. What I want to get at is this: does the preponderance of one particular name imply that there is a clan of that name, a number of people connected by family ties, or is that name common in that part of the country?
I think it is merely that that name is common in that part of the country.

2202. Lord *Emly.*] Take the case of the Molonys; suppose the prisoner to be a Molony, and that there were five or six Molonys on the jury, do you think that would diminish in any way the chance of conviction?
If I were the Crown solicitor I should certainly prick up my ears directly I heard a Molony called, and I should think twice before I allowed him to sit on a jury that was going to try a prisoner of the name of Molony.

2203. You

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2203. You might think that he was connected with the prisoner in some way, but suppose he was not; I suppose the similarity of name would not create any particular sympathy?

I think not.

2204. *Lord President.*] But that state of things might bring them from a small locality, I suppose; they might be congregated in one place?

Yes, it might so happen that in one county one name or one letter might fill up the whole panel.

2205. *Chairman.*] Do you agree with the evidence which has been given in your presence to the effect that the jurors of the better class are habitually not to be found in the jury box?

Yes, I think, as a general rule, any well-dressed man is certainly challenged; that is to say, up to the limit; of course, in misdemeanours they have only six challenges.

2206. And besides that, are you disposed to think that jurors of that class are only too much inclined to shirk work on the jury?

I do not think they do their duty. Mr. Morphy said there was a very large proportion of farmers on the panel which has been produced, that is, the last Clare panel; I have gone through it, and I see men put down there as "farmers" (I suppose there are eight or 10) who are justices of the peace, besides being farmers. That would give a false impression.

2207. Who is answerable for the description?

The clerk of the union, the person who primarily prepares the list.

2208. Lord *Inchiquin.*] Do you think generally, from your experience, that the jury system has certainly lately broken down; have you had sufficient experience to enable you to give an opinion upon that?

I think the jury system is perfectly good in every case in which the jury are indifferent.

2209. I mean in these special assault and agrarian cases?

I think it has broken down completely in agrarian cases; I do not think any jury in Clare would convict in an agrarian case.

2210. As far as you are aware, that would only apply to the period since this agitation began?

Yes, we had no agrarian cases before; at all events, none that I recollect. I do not think the same thing applies in Clare to the assault cases that I have heard people talking about elsewhere; I think they have very fairly done their duty in Clare, in assault cases.

2211. Before this agitation, you mean?

Yes.

2212. But not since?

I think they will convict if it is a mere drunken row, or even in an apparent faction fight; there is very little faction in Clare; but I think they really find very fair verdicts in ordinary assault cases.

2213. You heard what Mr. Morphy said about having special juries to try these cases; do you think that would be advisable?

I do not think that would overcome what I think is the great evil, namely, the intimidation that prevails in the country.

2214. You would still have intimidation?

I think if you had a jury of deputy lieutenants you would still have intimidation.

2215. Do you make any special suggestions as to what ought to be done now?

I perfectly agree with Mr. Serjeant O'Hagan, that the best plan would be to change the venue in agrarian cases; if agrarian cases could be tried by a Dublin jury, I think that would, perhaps, be the fairest jury you could get in Ireland, and I believe they would act perfectly, justly, and fairly.

 2216. I do

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2216. I do not think it was suggested to-day, but it has been suggested that there should be a special commission to try cases with a jury in districts in which the Attorney General had reason to believe that there would be a failure of justice?

I believe in the south of Ireland you will under no circumstances, in any part I know, get a conviction in any case that partakes in the least degree of an agrarian nature; and if you want to punish the offender in such a case, you must punish him by some other means than trial by jury. But I understand your Lordship to ask me about a special commission.

2217. Yes, a special commission of judges?

I think if any case were certified to be agrarian it might be tried by two judges without a jury; that would be very effectual; otherwise, I think a special commission might be issued for proclaimed or disturbed districts, in which case all the prisoners might be tried by the judges alone, without a jury.

2218. Do you think there would be a very strong public feeling against such a course at present?

I think the amount of punishment should be limited, as I think it would put judges in a very difficult position if they were given the power of capital punishment.

2219. Do you think there would be a strong public feeling against giving them such powers as you suggest?

Yes.

2220. On the other hand, you would be sure that crime would meet its punishment, would you not?

You would be sure that any person brought up would, if evidence could be procured, be tried fairly and justly.

2221. Do you think evidence is forthcoming as a rule in Clare?

I really could not tell you. I have no experience of that; I have nothing to do with the procuring of evidence.

2222. Lord *Ardilaun.*] You said you thought a fair trial could be had in Dublin and other parts of Ireland in agrarian cases?

Perhaps a Clare man might be tried in Belfast, where no question would arise about the agrarian difficulty at all. They would try him perfectly fairly there; but I do not think, with the exception of Dublin and Belfast, and perhaps Cork, that you would get a sufficient class of indifferent jurors to try such cases.

2223. Are you not aware that the merchants in Belfast and Dublin and other cities are very largely interested in the rural populations, owing to their selling goods of various kinds to them?

Yes, they might be intimidated, but I do not think that is very likely; besides that would only affect the possibility of two or three pockets being affected; I do not think their persons or property would be unsafe otherwise.

2224. You have not heard of any cases which have arisen in Dublin in connection with those offences in which those who have found proper verdicts have been "Boycotted" in business?

There were several verdicts found lately in Dublin, and I have not heard that the jurors have suffered.

2225. Lord *Emly.*] Upon the whole, as I understand your evidence, you do consider that justice might be vindicated by a change of venue?

Certainly.

2226. If so, would you not very much prefer to use that constitutional and recognised means, to the introduction of any extraordinary means, such as the appointment of a Commission of Judges?

Yes, certainly.

2227. Then I understand your feeling is that the recommendation of Mr. Serjeant

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Serjeant O'Hagan should be adopted, and you think that that would sufficiently vindicate the majesty of the law?

After all it is only a suggestion; we do not know what would be the case if a great number of country cases were brought up to Dublin; it might possibly be that the intimidation which affects the country jurors would also affect the town jurors after a time; what I am afraid of is not the corruption of the jurors, but the intimidation they would suffer from.

2228. But it would not necessarily follow that they should all be taken up to Dublin; you yourself suggested Belfast, and there are other places, no doubt, where fair and impartial juries might be got?

I think it was always found that a Cork jury convicted a Limerick offender with great celerity.

2229. You have mentioned the name of Limerick; have you any knowledge yourself with regard to the Limerick juries; do you frequently attend the assizes there?

I have been in court there very frequently.

2230. Have you formed the same opinion of their intelligence, and do you consider it low?

I think the difference between them and the Clare jurors, at all events in the eastern part of Limerick, is that the juries in Limerick would not convict in faction cases.

2231. Putting aside the faction cases, do you see any difficulty?

I know so little about them that I should not like to give an opinion; but I have no doubt all over the south of Ireland you would not get a conviction anywhere in an agrarian case.

2232. Earl of *Derby.*] Do I understand that you think a change of venue would be sufficient to enable you to obtain convictions in agrarian cases?

Yes, I think so.

2233. You think that there would not be sympathy felt, say in Dublin, for an offence of that class committed in Limerick or Cork?

I do not think so.

2234. You do not think that those who organise such matters would find the means of getting at juries in even a distant part of the country?

I do not think they would in Dublin. If you took a Clare offender to the county of Westmeath, I have no doubt a way of intimidating the jury there would soon be found.

2235. Do you think the class from whom Dublin jurors are drawn would be willing to accept the odium and the possible danger of acting as jurors in cases of this kind arising all over Ireland?

I think they would have to do it. Dublin jurors have a great deal of extra work thrown upon them, because civil cases from all parts of the country are sent to them. That observation, of course, has reference only to the question of extra work; but speaking on the question of intimidation, I may say I do not believe that intimidation would have any effect whatever upon jurors in Dublin.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, Twelve o'clock.

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Die Martis, 5° Julii, 1881.

LORDS PRESENT:

Lord President.	Lord Inchiquin.
Earl of Derby.	Lord Silchester.
Viscount Hutchinson.	Lord Monck.
Lord Tyrone.	Lord Emly.

The MARQUESS of LANSDOWNE, in the Chair.

Mr. HENRY JAMES MONAHAN, is called in; and Examined, as follows:

2236. *Chairman.*] I believe you are Registrar of the (late) Consolidated Nisi Prius Court in Dublin?
Yes.

2237. How long have you held that office?
Since 1864 permanently; but I was registrar to my father, Chief Justice Monahan, since 1853.

2238. I presume that in that capacity you have had ample opportunities of watching the operation of the Jury Laws in Ireland?
I have; as far as the working of them is concerned.

2239. Could you give the Committee any idea of the nature of those opportunities?
My office is similar to that of an associate in London, and an associate is in fact the officer of the court during civil trials by jury.

2240. Does your experience extend to criminal as well as civil cases?
Only to civil cases.

2241. Will you state generally to the Committee your impression as to the results produced by the change in the law with regard to juries which took place in 1871?
I think that in Dublin the juries are decidedly better; but although I fully approve of the principle of the Act of 1871, I think it might be improved in matters of detail as to its working.

2242. Are you now speaking of the Act of 1871 as amended by subsequent legislation?
I think that the Act of 1871 was not bad except in small things, but I think the Act of 1876 works very badly. There were two Acts in 1876; it is the Jury Procedure Act which I think works very badly.

2243. Will you tell us in what respect it works badly?
The first great change effected by that Act was this: You summon a large number of jurors on the first day of the sittings; then you are bound to call all those jurors over, and you mark the jurors that answer and the jurors that do not answer to their names when called. You return a panel to the sheriff showing the names of the men who have answered, and those who have not answered the sheriff is bound to re-summon to the first court that wants them. When I investigated it I found that the reason why those men had not answered was, in nine cases out of ten, that they were non-existent. The sheriff is actually bound to summon a large number of non-existing jurors. The result is that when you

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begin in Hilary sittings, supposing that there was only one court instead of a great many, and supposing that we returned 20 dead men in Hilary as not having answered to their names, the sheriff would be bound to summon those dead men at the next sittings; so that at those sittings we should have 20 and at the next sittings we should have 20 more, making 40; and by the time that we get to Michaelmas, out of 96 jurors that we summoned, we have not enough to carry on the business.

2244. Then we may take it, I suppose, that that points to some defect in the revision of the jurors' lists?

Of course; but I think the better way would be not to re-summon them at all. I think that section is not a good one, because, in a town particularly, there are such changes of domicile. The jurors' book at present is settled once a year in October, and it practically rules for three years; and I was going to suggest that there should be a quarterly revision.

2245. Is there any other defect in the present arrangement to which you wish to call our attention?

It is not distinctly my business, because it touches the criminal side of the court; but it is a defect that I know of, and I think it is a very bad defect; that is to say, that the Jury Act of 1876 gives a power of challenge to both plaintiff and defendant in a civil case. A special jury under the old system is rather a complicated process, which would take a long time to explain; but the result is that there are 24 special jurors returned on a panel to try the case. It is now, I believe, held that when they are trying a misdemeanour or a very serious offence, not being a felony, the prisoner can challenge six out of those 24, and the Crown has no challenge at all Supposing that there are 24 men returned on a panel, practically I suppose there will not be more than 19 who would answer one way or the other, what with sick men and dead men, and so on. Then if the prisoner challenges six, he, in fact, has the selection of the jury, and though I cannot be sure, I rather think that whoever framed this Act of 1876 quite forgot that provision. The reason I know so much about it is that it has attracted a good deal of attention lately in Dublin.

2246. The right of six challenges in the case of a misdemeanour is a recent innovation, I believe?

That is so. The way in which this has arisen is this, that in the case of special jurors under the old system there were 48 names returned first; each side reduced it by 12, and the result was that there were 24 left. When once they had done that, when the case came to be tried, neither side could challenge under the old system. But now, under Section 10 of the Act of 1876, the prisoner can challenge, but they hold that the Queen cannot.

2247. Would not the Crown have the right of ordering any number of jurors to stand by?

They say not in this case.

2248. I wish to understand you clearly; is that in cases where a jury is struck under what is called the old system?

I am speaking of a special jury under the old system.

2249. Is a jury ever struck under such circumstances in civil cases?

Yes; it used to be much commoner than it is now, but now it is hardly ever the case.

2250. But the law still allows it?

Yes.

2251. Can you give us a reference to the statute?

34 & 35 Vict. c. 65, s. 39, the Act of 1871; and the marginal note is, "Special juries may be struck according to the old practice." That gives most elaborate directions as to how it is to be done.

2252. Then your answer, pointing to an abuse of the right of challenge, points to that abuse existing in the case of juries struck under that section?

The right of challenge of six jurors exists in all civil cases, except that, curiously

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curiously enough, in a Crown Case the Crown has not got it; but that right of challenge is under the Act of 1876.

2253. Subject to those imperfections in the procedure which you have pointed out, do the Dublin juries, as a rule, perform their duties in what you would consider a satisfactory manner?

Of course you may occasionally have a bad jury, but as a rule they are very good juries, and the last time those in attendance were excellent jurors.

2254. Then I presume that you have no particular recommendation to make to the Committee in favour of any considerable alteration in the present system, except upon those two points?

I think I have. For instance, I quite approve of the taking away from the sheriff the power that he used to have of selecting a jury. Formerly the sheriff selected a jury, but now he does not.

2255. You are now expressing an opinion in favour of a change in the law which has already been carried out?

Certainly. I am in favour of taking from the sheriff the power of selecting a jury; and (but this of course is only an opinion) I think that the alphabetical selection of jurors could be improved upon.

2256. In what manner?

I would not have alphabetical selection at all. My objection to alphabetical selection is, that under the present system you have a jurors' book with all the A's first, then all the B's, then all the C's, and so on; and the way in which the jury is selected is this: Supposing, for argument's sake, that you want 40 jurors, you begin with a man whose name begins with an A, and he is the first man on the panel; then the next man is a B, and so on, until you get your number. When you get down to the end of the alphabet, you go back again. It is very often the case in Dublin, at all events, that if you have one member of a firm on the panel, you are almost sure to have the other two or three also, so that it is almost a stereotype form now, when one man gets up and says to the judge, "My Lord, there are two of our firm on the list already," that one is told to serve for the other two, so as not to take them all away from their business. That is one objection to the alphabetical selection.

2257. That is to say, that after the letters have been gone through several times, the jury is formed out of the residue, namely, those letters which happen to be most numerously represented?

Supposing that you want 76 or 100 jurymen, you are bound to begin with A, and take B and C, and so on, down to the last letter of the alphabet. Then you begin again at A, and then when you have exhausted the letters of the alphabet, you begin again with the letter A.

2258. Then what happens is this, that when you have exhausted those letters which are not numerously represented, you have to fall back upon the residue, namely, those letters which are numerously represented, and your jury is formed exclusively out of those letters?

Quite so; for two years you fall back upon them.

2259. Do you make any particular suggestion as to the manner in which that difficulty should be overcome?

I think what I would do would be this: supposing that there were 1,000 jurors on the book, I would put 1,000 cards, beginning with No. 1 down to 1,000, into a balloting box, and I would have that given to some rather high official (not to the sheriff), who would have a book which had 1, 2, 3, down to as many numbers as there were cards. What I think would be the best plan would be, that when the sheriff got the precept to return, say 48 jurors, say for the Probate Court, for example, he would, having got this precept, send over a memorandum to this official to say, "I want 48 jurors for the Probate Court." Then this official would draw 48 cards out of the box, and as he drew them, he would enter in the book, "Hilary Sittings, Probate." Then he would put the name of the court and the sitting opposite each number on his book, and then he would return those numbers to the sheriff; and I would make that the jury. Then I would not put those cards back into the box, but I would leave those aside;

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aside; and then when the next jury was required, he would summon whatever number he wanted, and so on, until the whole box was exhausted; and when that was done he would put them all back again into the box, and begin over again. I think that you should begin on the 1st of January with a new book and a new jury.

2260. Is there any other recommendation which you wish to make to the Committee?

I think the number of exemptions ought to be increased. For instance, I think domestic servants ought not to serve on juries, and railway guards also. I know whenever they are summoned, we always have to let them go away, so that practically it would be better to have them exempted. There is also another class of jurors which we never can get to attend, namely, bank managers.

2261. Earl of *Derby.*] On what ground do you suggest the exemption of these various classes; in the case of domestic servants and railway guards, I presume, because they are so much in a position of dependence upon other men?

The ground is, that it is such an inconvenience to them to attend. For instance, if a coachman is called as a juror, one always gets no end of letters from his master, and ultimately he is let off.

2262. *Chairman.*] If you once admit private inconvenience as a ground for exemption, will you not have to extend your exemptions very considerably?

Practically, when we have a coachman, the judge nearly always lets him off. Bank managers are let off, simply because when they are on the panel, they always have to be let off, or, probably, they attend once or twice during a sitting, as a great compliment. Then I would certainly exempt attorney's clerks, if I had the power; they always are let off.

2263. *Lord President.*] If you once begin increasing the exemptions, would you not go to an extent which would make it exceedingly difficult to get anybody to attend at all?

As regards bank managers, I was talking to a bank manager yesterday in Dublin about it, and we came to the conclusion, that in all Dublin there were about 10 bank managers, so that it would not be a serious inconvenience.

2264. But it is very desirable to keep as many independent and impartial persons on the jury as possible, and if you exempt all those people, you diminish very much the number of that class?

It is only a matter of more or less convenience; it is a very inconvenient thing to have, as a juryman, a man who will not come, or who makes a great compliment of attending.

2265. Even if the attendance on juries is only very occasional, once a year, or something of that sort?

That, of course, depends upon when the books are exhausted.

2266. Do you consider that the attendance of jurors in Dublin, at present, is excessive?

I think it is not evenly divided; for instance, in year 1880, 444 jurors were summoned on masters' juries; these juries consist of only six jurors; 12, and sometimes 18, jurors are summoned by the sheriff; there were only 33 requisitions for masters' juries in 1880; 12 or 18 jurors are only summoned for the one case. The average length of an inquiry before a master takes about three hours; and yet these jurors so summoned are marked off on the jurors' book, and get as much credit as the jurors summoned for the *nisi prius* sittings, whose attendance is required for weeks together, and who, if they do not attend on the first day when panel is called over, are liable to be summoned again. I would suggest that though jurors required for the masters should be taken from the jurors' book in the usual way, yet that their being thus summoned should not exempt them from being summoned again, either for the *nisi prius* sittings, or the Commission Court at Green-street, or the Probate Court.

2267. With

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2267. With regard to the revision of the lists, Mr. Byrne, the collector general of rates, made this suggestion the other day; I do not know whether you have considered it: "The suggestion which I make is this, 21 days before any jury shall be required to be summoned, the sheriff shall submit the proposed panel to the collector general, or to the clerk of the union, as the case may be, for report as to the probable or possible attendance in court of the persons named therein at the forthcoming sittings, and the sheriffs shall add to the panel, when so returned to him with such reports, one additional name for every person reported by the collector general, or by the clerk of the union, to be dead, or removed, or otherwise incapacitated to attend at the said sittings; and the clerk of the peace shall then amend the list of jurors, according to such reports, by striking out the names of all persons who have so died, or removed, or are otherwise incapacitated to attend"; he made that suggestion in preference to a quarterly revision, to which you are favourable; do you think that his suggestion would be workable?

I think it would work capitally, if they took the trouble. It would not be as openly done as a revision, but I think it would be a very good thing.

2268. You do not see any objection to it?

No. The precept, at present, is only signed 15 days before the jury is summoned, and, therefore, you would have to amend the number of days for which the precept should be signed; but if that was made part of it, I think it would be a very good thing. I think that clearly, at present, it is too difficult to amend the jurors' book.

2269. *Chairman.*] I should like to be quite sure that I understand your suggestion with regard to superseding the present alphabetical selection; you propose that the whole of the numbers on the list should be written on cards, and that you should ballot for the juries right through the numbers?

Yes. Of course, that is putting it in very general terms, because, assuming that that was to be done, it would have to be carried out into details, which would take too long to go into; one would have to have all the Acts before one before one could show what details would be necessary. But all that could be very easily done, and it would have the merit that the man who would ballot for the jury would not know at all whom he was balloting for; he would simply have a number, and then that number would be given to the sheriff, and that man would be the juror. The two books would correspond in numbers, except that the jurors' book would have the names and numbers, and this man's book would only have the number and a blank; and, therefore, one book would check the other, which would completely show that they could not tamper with the books.

2270. *Lord President.*] It has been suggested that the list for the county of Dublin, and for the city of Dublin, should be amalgamated; do you think that that would be a desirable thing?

I think it would; it would certainly relieve the city enormously; but then there might be difficulties about it. There is one thing which is certain with regard to the Jury Acts at present; there are eight of them, and it would be a very good thing if they were consolidated into one Act, instead of being a great many Acts.

2271. *Chairman.*] Have you any other suggestions to make to the Committee?

There is another suggestion, which I think is a very important one. When a case is undefended at present, we often have to go on without 12 men, owing to the bad attendance of jurors. At the last Michaelmas sittings, for instance, we had a great many cases where we could not get 12 jurors, but had to go on with only six or seven. But the parties must consent, in order to try it with less than 12. My suggestion would be that, in an undefended case, where the defendant does not condescend to appear at all to defend his case, the judge himself could find the verdict without a jury.

The Witness is directed to withdraw.

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MR. JOHN GEORGE GIBSON, Q.C., is called in; and Examined, as follows:

2272. *Chairman.*] You are a Queen's Counsel, I believe, in considerable practice at the Irish bar?
I am.

2273. You have given some attention, I presume, to the operation of the different Statutes which form the present Irish Jury Law, and more particularly to the great changes in the law which took place in the year 1871?
Yes.

2274. Would you kindly state to the Committee whether, upon the whole, you are disposed to think that those changes were in principle desirable?
I think they were not in principle desirable.

2275. The main objects of the change were, I take it, threefold, viz., to introduce a rating qualification instead of the old freehold and leasehold qualification; the abolition of the power of selection which was allowed to the sheriff; and, thirdly, the equalisation of the burden of service?
Yes.

2276. Taking those three points, would you state how far you think that the change was desirable?
The main point is, of course, the selection by the sheriff. I think the old system worked satisfactorily; at least there were no wide complaints of it. There were a few instances here and there when objections were whispered, not openly put forward; but I think, on the whole, the system did not lead to a complete failure of justice. The present system appears to have led, and is leading, to a complete failure of justice. That, of course, is owing not only to the fact that the jury is selected mechanically, without any intelligence whatever upon the part of any one, but it is owing also to the circumstance referred to in one of your questions, namely, that the qualification is too low. Of course the two things play upon one another, and one increases the other. For instance, if the jury panel at present was selected from too wide, that is too low, an area, if you had a power of selection in any intelligent and responsible officer, you would, to some extent, obviate the inconvenience which would arise from the qualification being too low. That appears to me to be a natural result. Supposing that there was no power of selection vested in any one, and that the qualification was high, of course there would not be the same objections affecting the juries as at present. At present, practically, the juries come from the very class who are subject to the influences which, of course, press in criminal cases. Men are on the juries who have been tried for those very offences, and they not only sympathise to a certain extent with the prisoner who is in the dock, but more than that, they are subject to pressure of a very dreadful character outside.

2277. We will come to the question of the conduct of juries presently; I want to ask you another question or two about selection?
I think the way in which the thing is worked at present, namely, a mechanical selection of the jury, which is known as the alphabetical selection, objectionable. Being an alphabetical selection, that alphabetical selection would be better if there was a mere balloting, probably; because the result, I suppose, has been pointed out by some of the witnesses who have been examined before you, that some of the letters of the alphabet have in Ireland (and I suppose in England also) more numerous representatives than others. For instance, there is probably no Z in Ireland at the present moment, and in Tipperary there is a great superfluity of R's; the result is that there is a tendency to have a panel made up of an enormous number of certain letters; and those persons are always very much connected, and of the same way of thinking. If it was by ballot that would be to some extent obviated, if not entirely. If there are 1,000 names in the book, and they are put into a hat, and they were drawn in consecutive series of 100 each, it might be

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be that the Ryans, which is a great Tipperary name, would all jump out; but it would not be necessarily so, as it is under the present system.

2278. But you think some step is necessary, in order to prevent the hardship now suffered in the case of the jurors who happen to come under one of those letters which is left when the less numerous letters are exhausted?

As far as I understand the practice of the sheriffs (you have had some sheriffs examined before you), they get out of that under the 19th section of the Juries Act, in this way: that they consider that the paramount object of the Juries Act is, not only to select the names alphabetically, but also to give each man his fair amount of service, and if there is only one A and three B's, A has not to serve three times to B's once. But they exhaust A on the first panel, and they take one B; and then, the next time, they strike off A, on the ground that he has already served, and they consider the B's the only open names. That may not be so as a matter of fact, but that is my impression of the sheriffs' practice.

2279. Going back to the question of selection, I understood from you that you believe that, although there was some complaint with regard to the manner in which the right of selection was exercised, the complaint was not well founded in fact?

The only complaint came from the classes who suffered from the convictions; that is to say, I do not think it was a complaint which proceeded from the law-abiding classes of the community.

2280. But was there not a general impression that, even if the thing was not done, it was within the power of the sheriff virtually to pack a jury?

Undoubtedly the sheriff could have done so, but I do not think that such an impression prevailed generally. I agree with the evidence of the learned judges who were examined in 1874, I think it was, who said that there was no such general impression. I do not think there was that general impression, at least in Leinster and the south of Ireland, the part with which I am acquainted; it may have prevailed in the north, but I am not competent to say whether it did or did not prevail there.

2281. Do you think that, considering the fact of this change having been made in the law, it would be possible or desirable to revert to the old system, and to restore the right of selection to any public official?

I would be in favour of it, most decidedly, if the Bill could be carried. The difficulty which is felt about suspicions entertained by the lower orders of the fairness of the jury system is not obviated by the present system at all; that is an entire mistake. Under the old system the sheriff was a man of position, who acted by the sub-sheriff, who was handed by descent from one sheriff to another; there was a Catholic sheriff one year, and a Protestant sheriff another, and they usually had the same sub-sheriff, and that officer could not lean very much to one religion, or one political party, more than another, and you had the guarantee of his position, which, of course, might be, in conceivable circumstances, abused. At present the swearing of a long panel in a heavy misdemeanour case (such as is being at present tried at the assizes for the North Riding of Tipperary) will probably take about three or four hours; there is an enormous answering of names; and the Crown, in order to have any chance of conviction at all, have to perform what is a very invidious task in the face of the public, that is to say, the Crown Solicitor directs an enormous number of common jurors to stand aside, that being the very class who were pronounced by the Legislature to be proper persons to be empannelled upon the trial of the issue. The Crown Solicitor is entirely right to do so; it is his only chance of a conviction; and even with that extraordinary unlimited power of selection (I have seen over 100 names stood aside) a conviction is not always obtained. The effect of that is very serious. Would it not be better to have a more judiciously selected panel than to have the selection exercised in the face of the public by an officer, who is certainly desirous, from his profession and from his position, to obtain a conviction? It is essential, at present, that there should be this power of stand-by in Ireland.

2282. The right of the Crown to order jurors to stand aside is unlimited in

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theory, but in practice is it not limited in this way: that, supposing a great number of jurors to be ordered to stand aside, and it is found impossible to form a jury, the list has then to be called over again?

Yes; but when you have got 180 names answering, to say that the Crown can stand aside all but 12, is practically the Crown packing a jury; I mean that is what the country people would say. The Crown may stand aside, practically, the whole panel, and it is necessary to do so in some cases; and even with that free power of exclusion, the result is very often failure.

2283. Your point is that it virtually amounts to selection?

It does amount to selection, and to selection of an extremely difficult character. The selection which the Crown Solicitor can exercise in a place like Tipperary, which is a very large county, is, of course, of a very unsatisfactory character. The jury panel is necessarily an imperfect description; when one of the numerous legion of Ryans, or Delanys, or Dohertys is called up, he cannot tell what is the character of that man; he may have been convicted of an assault on the police in the preceding week, or be a real relation of the prisoner.

2284. I think you made an observation just now as to the class from which the jurors were usually drawn; under the present law, what class would that be?

They are all drawn from the same stratum in the big counties, the small farming class. There was a qualification in the Jurors Act of 1876, that is to say, an income qualification, a freehold and a leasehold qualification in addition to the rating qualification. The present qualification is practically a rating one. Those income qualifications, I believe, are practically non-existent.

2285. I suppose that on the jury-list you would find the names of a certain number of persons who were not farmers?

A few. If you take the criminal cases separately from the civil cases, I will tell you exactly how the thing works. In the criminal cases the vast body of the jurors, as I have already stated, are from the farming class. The prisoner supposing that it is a case of felony, has 20 challenges, and he challenges every man who looks as if he belonged to one of the upper classes. That effectually gets rid of every one of that description from the jury, and there are very few.

2286. Are there any other reasons which contribute to keep those few better class jurors out of the jury-box; supposing that a juror is on the panel, is there any reason why he does not attend?

My impression is that in Ireland it is very difficult to get any one to attend to what is an unpleasant and dangerous duty. I can conceive that a man of the better class would sometimes prefer the possible infliction of a fine to the perhaps very serious consequences of being marked down for holding out against an acquittal in a case of a certain character. But, as a rule, so far as I know, there is a fair attendance in Tipperary, and in the other counties, of the respectable class of jurors, so far as there are persons of the upper rank on these general panels. I do not think it could be fairly said that they were abandoning their duty.

2287. Have you any reason to suppose that they are so abandoning their duty in any part of the country?

This is, of course, very much a matter of conversation, and it is not a question in which it is possible to give any very specific evidence, because I cannot say that I ever asked any person whether he was afraid of attending on a jury; but there is an impression in Ireland that it is a very serious thing to take part in cases of a certain character. Of course, the judge is safe, and he gives a strong charge; and the counsel are safe, and they make fine strong speeches; and the attorneys are, or used to be, safe; but I believe they are safe no longer, because they are Boycotted if they take part in cases of a certain character. But the juror who is known either to have taken part in a conviction, or to have resisted an acquittal, I think, occupies a position of very great unpleasantness.

2288. Is it not the case also, that a certain number of those better class jurors of

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of whom you have spoken, are wanted for service, either on special juries, or on the grand jury, and therefore are not to be found on the common juries?

The long panel represents all the jurors properly, but, of course, there are a certain number of special jurors who are required. There is at present what is a nominal form gone through at the beginning of each assizes; practically, whether there is a special jury case to be tried or not, all these special jurors are called, and they have to attend, and having answered to their names, they depart pleasantly home, and get credit for their attendance. It appears a very ridiculous form, but it is gone through. Perhaps some alteration might be made in that respect. It takes some time to call them, and there is no reason why some notice should not be given them in sufficient time to prevent their attendance.

2289. Those are the men with a higher rating qualification?
Those are the men with a rating qualification of 150 *l.* to 100 *l.*

2290. And who are presumably the most intelligent representatives of their class?
Yes; you may reasonably assume that they are men of more intelligence.

2291. Then does it come to this: that upon the jurors' list you have to begin with a small minority of more intelligent and respectable jurors, and that that minority is diminished by a variety of circumstances, until you find that virtually it is almost unrepresented on the jury?
I think it will be found in every case that the small minority fall to the fire of the prisoner's challenges.

2292. Will you kindly state to the Committee your impression as to the conduct of the juries thus constituted; do they, as a rule, abide by their oath, and discharge their duties in a proper and independent manner?
I would prefer to give general evidence upon this point, because I am not a Crown prosecutor on my circuit, and it is inconvenient that I should be stating to the Committee my experience in my own cases. Of course there might be some ground of observation, if I referred to what took place in cases of my own. The Dublin juries are satisfactory; the Dublin special juries are very excellent; special juries subject to the protection which we have in civil cases of the challenges; and the common jurors do their duty very fairly, subject to the same protection. But in the country in cases of an agrarian character, Boycotting cases, cases in which this unfortunate land question comes in directly or indirectly, there is no use in going to a jury. In a Crown case, of course it has always been for some time impossible to get a conviction in any case of the kind; but in cases on the civil side, unless the case is so coercive that you are entitled to a direction by the judge who tries the case, there is very little use in going to trial, because any question of fact that can be suggested will be found against the plaintiff.

2293. Could you give us something like an enumeration of the classes of cases in which you think the jury are not to be depended upon?
You must begin with land and end with land; anything that has any connection with land. For instance, I will give you an illustration: a bailiff is the principal witness in a Crown case to prove an assault; he is cross-examined; the fact of his being a bailiff would be nearly sufficient to introduce the unfortunate land element into the case. In any of these rioting cases in connection with meetings and speeches and recent exhibitions, it would of course be nearly useless to prosecute. That is my impression.

2294. We have had a good deal of evidence pointing to the conclusion, that in assault cases generally, you cannot depend upon a jury convicting?
No doubt it is so in some counties. It is not so in the whole of my circuit; in Wexford I think in most cases, and to some extent in Waterford and in Wicklow, they are punished by the jury; but in Tipperary, provided that there is no unnecessary violence used, there is not much chance of a conviction. "No unnecessary violence," means that, having regard to the whole history of the old faction fight, the new attack has not surpassed in violence the old one.

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If a man had only met with the ordinary Tipperary fracture, from which they all recover, it would be considered unjust to cut off his nose by way of retaliation, that would be considered to be in opposition to the spirit of the game. But if he struck his antagonist with a little extra violence and killed him, that would not be regarded as an excess. But in assault cases in Tipperary between the people themselves, there is certainly an indisposition to convict, so long as no "unnecessary violence" has been used.

2295. Whether they arise out of land quarrels, or not?

I think so; but, if two men going home from a fair fight on the road, or even if one man waylays the other, there is a disposition to acquit between the people themselves.

2296. Is that indisposition to convict always manifested in those districts?

Since I have joined the circuit it was a distinct point in one's favour to have an assault case to defend, because there is a defence open in all those cases that the prosecutor struck the first blow; and it is extraordinary in what a great number of cases it is found on the evidence that the prosecutor has struck the first blow. I mean to say that the prisoner examines witnesses who prove it.

2297. Earl of *Derby.*] I presume that in a great many of the cases which you have mentioned the failure of justice is due quite as much to conflict of evidence as to predisposition on the part of the juries?

I think not. Of course there is a conflict of evidence in most criminal cases. For instance, there was at one time our old friend the *alibi* given in every Tipperary case, but that is regarded now as a form; nobody attends to an *alibi*. There is always the same question asked: "Did not the prisoner sleep on the inside of the bed?" That is the only question which is asked in cross-examination. On the particular night when the murder or assault was committed, the prisoner and the witness sleep together, and the prisoner always sleeps on the inside; and that evidence is not seriously pressed.

2298. Do you not find that in these assault cases you generally have two stories diametrically opposed to each other told by the two parties, and a number of witnesses to support each statement?

Very often. They are what are called a case and a cross-case; that is to say, first the prisoner is put into the dock, and then the prosecutor goes in and takes his place afterwards; that is in the case of a faction fight; but there are a great many cases in the country in which the parties go to a fair, and one man leaves first, and he waits for the other on the road, and he then receives him with a blackthorn or a stone. It is quite fair in their code of fighting, I think, to do that; it is not considered necessary to give the man notice that you intend to attack him; but if you have a grudge against the family, and he at any time has attacked you, it is fair play enough to wait on the road and give him a beating as he is coming home.

2299. *Chairman.*] Have you observed any alteration in the demeanour of the juries since the present agitation?

In some cases, as I say, yes; I think that in any land cases it is nearly out of the question to get a verdict.

2300. The difficulty has always existed, but it has perhaps become more intense of late?

Of course it always did exist to some extent; but it was nothing like what it is at present.

2301. In a case arising directly or indirectly out of land matters, should you have any confident anticipation of getting a verdict, however strong your evidence was?

I would not, and I have heard judges repeatedly state that the verdict was in the teeth of the evidence.

2302. Are there any particular statements of the judges to which you think it worth while to draw the attention of the Committee?

Not

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Not specially; I have heard it so often. They have been referred to in the public press from time to time.

2303. Lord *Emlyn.*] Of what circuit are you speaking?
Of the Leinster Circuit; that is Tipperary, Kilkenny, Waterford, Wexford, and Wicklow; but by far the worst of those, as regards the difficulty of getting verdicts, would be Tipperary.

2304. Lord *Inchiquin.*] Do those remarks apply since Lord O'Hagan's Jury Act came in?
Yes.

2305. *Chairman.*] But before Lord O'Hagan's Jury Act became law, did you find that none of those difficulties existed?
My experience at the bar has principally been since Lord O'Hagan's Act came into force, and I would prefer not to give any evidence as to the actual working of the jury system before that time. I know what it was in theory, and I know what the feeling was about it; but the best statement that you can find upon that head will probably be found in the Report of the Committee in the year 1874.

2306. To what causes do you attribute the misconduct of the juries which you have described?
That is a very large question. It is very much owing to the unfortunate disorganisation of all society and law which at present exists in Ireland. The jury system is of course a great part of a very large question. The juries at present come from a class who have certainly got interests which they think will be promoted by a certain line of action, and it is very hard to see, or believe, that they will act in any way which they are told is opposed to their own interests. The jury comes from a district such as, say the town which was mentioned in a trial the other day in Dublin, the town of Charleville. There was an action brought by a gentleman of the name of Goddard, in which I was engaged myself; it was an action against the principal hotel-keeper in the town of Charleville, which is a town of 5,000 people. The plaintiff had been received there, and he was turned into the streets at 11 o'clock at night, because the innkeeper said he was afraid of keeping him in the town. It was within 50 yards of a police barrack, and the defence made was that the town was in such a state of terror under mob law, and the police were reduced to such utter subjection that the innkeeper was obliged to turn out Mr. Goddard. As I said, he was within 50 yards of the police barracks; but it was known that, in last December, the police had retired before the mob into their barracks, and therefore the suggestion of the defendant's counsel was that, of course, the police who, as I said, were within 50 yards of the hotel, were mere dummies.

2307. Then what you wish to convey to us is, that when public feeling is in this sort of state it is impossible to expect members of the class from which juries are now drawn to do their duty in a proper manner?
It is very difficult to see how they can do it; for instance, take the case of large estates; you see a rich man sometimes on an estate who is as well able to pay as any other person; he joins with the general body of small tenants; he is to a certain extent coerced; he would be regarded as a traitor if he did not do so, and he therefore refuses to pay as well as the others. It is exactly the same on the juries. A juror can hardly be for a conviction when there are 11 for acquittal, and he feels that there is a question of this party character involved.

2308. Have you had much experience of cases tried before a jury struck under the old system?
I have not. That is very rarely used now; it has only been used in, practically, a few misdemeanour cases; and there has been an unfortunate ruling, which has been applied in recent cases, as you may have heard. A jury under the old system has 48 names; you do not know whether all those 48 men will be able to attend or not. Each party strikes off 12, and there are 24 left altogether. There is a ruling of the Court of Queen's Bench of the present Lord Chief Justice May, which has been followed by his colleagues, as I understand,

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though with disapproval on the part of Mr. Justice Fitzgerald, at all events, that the right of challenge remains, notwithstanding the striking off of 12 names. Now there are only 24 on the panel after reducing the panel. If you then give the right of challenge to the prisoner he has six challenges in addition to the 12; therefore he has 18 challenges, and if the Crown could stand aside at all, the result would be that they could not get a jury at all.

2309. Earl of *Derby.*] The result is then, practically, that the prisoner chooses the jury?

The prisoner chooses the jury, and he has an absolute power under this Act of Parliament, as I understand it, of requiring the jury to be struck under the old system in misdemeanour cases tried in the Queen's Bench.

2310. Lord *Emly.*] Is the challenge a peremptory challenge?

Certainly. The number is reduced to 24, and then he has a challenge of six.

2311. *Lord President.*] Do I correctly understand that the prisoner can elect to be tried under the old system?

Yes, I understand so. He applies to the court under section 33 of the Act of 1871.

2312. Lord *Inchiquin.*] If it gives him so much advantage I wonder that it is not more often applied for?

It is applied for in the Dublin cases, where they are brought into the Court of Queen's Bench by a writ of *certiorari.* For instance, there was a misdemeanour case brought up from the country, the Milton More case, in which a bailiff lost his life in a riot; and, in that case, the prisoners applied for and obtained a jury under the old system. Then they will be entitled to reduce the panel of 48 to 24, and they will have six challenges in addition.

2313. Can the judge refuse the application?

I do not think it can be done now practically.

2314. Lord *Emly.*] When was this decision given by the Chief Justice?

Some time ago. It is a decision of the Chief Justice alone, as far as I can understand, and it has been followed in deference by his colleagues; but I am not aware that the question has been seriously argued. It was followed in the trial, which was called in Dublin the State Trial, which took place last December.

2315. But that was before Mr. Justice Fitzgerald, was it not?

It was held before Mr. Justice Fitzgerald and Mr. Justice Barry; but they deferred to the ruling which had already been made by the Lord Chief Justice. The Challenge section (39 & 40 Vict. c. 78, sect. 10) gives an absolute power. The section is as follows: "In all civil trials in the superior courts, the plaintiff or plaintiffs on the one hand, and the defendant or defendants on the other respectively, shall be entitled to challenge without cause assigned in all six jurors, and in the inferior courts in all three jurors, and in all trials of indictments for misdemeanour and informations the person or persons on trial shall be entitled to challenge without cause assigned in all six jurors." Then the marginal note of 34 & 35 Vict. c. 65, s. 39, is, that "Special juries may be struck according to old practice." I have never known a judge refuse a jury under the old practice, provided that there is time. It is considered to be a right of the prisoner's.

2316. *Chairman.*] I understand you to say, that the right of a challenge works particularly badly in the case of juries struck under what is called the old system?

They have got the jury struck under the old system with 48 names. Each party is considered to be bound by that, and the prisoner, in addition to being able to challenge 12, has been ruled or be allowed to challenge six more. If the Crown had a right of challenge or stand aside, they might reduce the panel below the 12, because there are nearly always some of the 24 who have an excuse, or who are absent. I think that the power of having special juries struck

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struck under the old system in Crown cases a very inconvenient one if this right of challenge is added.

2317. Lord *Inchiquin.*] It gives the prisoner exactly the same number of challenges as the Crown, does it not?

It gives him an advantage that he has not in any ordinary misdemeanour case. If the jury is not struck under the old system in this country, he has no right of challenge at all; a prisoner indicted for misdemeanour in England has no right to challenge. In the year 1876 the prisoner was allowed in misdemeanour cases to challenge six jurors. In juries which are struck under the old system, as I understand, he not only reduces the panel by 12 names, which he strikes off himself, but he has also been ruled to have a challenge of six in addition, so that he has really the power of getting rid of 18 names; of course the Crown cannot do that; I do not think the Crown could challenge or stand aside.

2318. *Chairman.*] Those juries which are struck under the old system are composed entirely of special jurors, are they not?

Yes, they are a very high class of jurors, or they are expected to be so.

2319. Therefore, if a high class juror is likely to do his duty better than a lower class juror, the prisoner, in spite of his right of challenge, has less chance of getting off with a special jury than he would with an ordinary one?

I think not. It is very hard for the Crown in every place to get a perfectly composed jury, even if they exercised a free right of selection; but when they are tied and hampered by this jury under the old system, I think the chance of the Crown is a very small one in cases in which public feeling is evoked.

2320. Lord *Emly*] But the Crown have the power to tell the jurors to stand by in misdemeanour cases?

Certainly, but not in juries under the old system. I have myself seen in Nenagh 86 jurors directed to stand aside. They have no right to direct them to stand aside, in case of juries struck under the old system.

2321. Then the case would stand thus, that the prisoner would have six challenges, and the Crown would have no challenge at all?

Mr. Monahan, who is a very experienced officer, the officer of the court, says he does not think the Crown could challenge six.

2322. Lord *Monck.*] Are those challenges for cause?

No, they are peremptory challenges; so that although the prisoner in an ordinary misdemeanour case has only six challenges, upon juries struck under the old system he has practically 18.

2323. Lord *Emly*] Then the prisoner having the power under the old system of challenging six jurors, the Crown has no power of making anybody stand by?

As I understand, they have not. If your Lordships care to hear my opinion upon the matter, I think it is inconvenient that this right of challenge should be given in misdemeanour cases at all. I do not see why a right of challenge should exist in Ireland which does not exist in this country.

2324. *Chairman.*] Would you allow the right of challenge in the case of felonies?

I would, but I think the present number of challenges allowed, viz., 20, is a very liberal number, more especially when each prisoner in the dock has the power of challenging 20, so that if there are two prisoners indicted, there may be 40 challenges, and if there are three indicted, there may be 60 challenges.

2325. Viscount *Hutchinson.*] They can club together in their challenges, can they not?

They can club in their challenges if they wish, but they are not bound to do so. In misdemeanour cases, the section of the Act is not distributive, and the whole of the men in the dock must club their challenges.

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2326. *Chairman.*] But you think that the accused in felony cases should have a certain number of challenges?

Yes; I think that 20 challenges is too liberal in allowance.

2327. Lord *Inchiquin.*] If three men are accused in the dock of one crime, has each of the three 20 challenges?

Certainly, for felony.

2328. That is to say, if a jury was being sworn to try the whole three, there would be 60 challenges?

Yes, if they do not join; they look about in the court-house, and see what friends they have there, and if they like the look of things they will sometimes join in their challenges; but sometimes they allow the thing to go on. But in misdemeanour cases they must stand on their six challenges.

2329. Earl of *Derby.*] Supposing that as many as five or six prisoners are tried together, and that they do not choose to join, does not that make it practically impossible that a jury should be selected?

I have never seen so many in the dock for felony; I have never seen more than two in the dock for felony together.

2330. But there is no reason why the number should not be greater than two?

Not the least.

2331. Supposing that there were a case in which five or six were tried together, that would be a *reductio ad absurdum*?

There would be a very large attendance of jurors of course, as I have already stated, and swearing the jury in Crown cases, takes three or four hours, or perhaps more. The jury begins to be sworn at half past 10, and the Crown counsel does not begin his statement to the jury sometimes till four o'clock.

2332. Five prisoners would have the power of excluding 100 jurors?

They could do so, if they did not join in their challenges, but that is the same in England; the English jury laws are the same, with the exception of some recent improvements.

2333. *Chairman.*] You have expressed a pretty strong opinion that in a certain class of cases the common juries are not to be depended upon; have you any suggestion to make to the Committee for getting over that difficulty?

I have; but I am afraid that affairs have come to a very serious pass, and I cannot say that the suggestions which I would make would actually, if sanctioned by Parliament, necessarily produce the anticipated good result, or the possible good result. I would like to see an increase of the qualification of jurors, something over what it is at present, subject, of course, always to there being a sufficient number of jurors in the county of the qualification. That is a matter which I have not gone into, and which I am not able to go into, but upon which your Lordships' Committee will be able to ascertain the data without any difficulty. But I would be in favour of increasing the present rating, so as to improve the class of jurors.

2334. You think that, subject to that condition, by increasing the rating qualification, you would get a class of men who were more independent, and who were likely to do their duty better?

The higher you go, of course, the freer the men are from those influences of which I have spoken. I do not say that they will be absolutely free from such influences, because you sometimes see on the special jury men who you know perfectly well are leading members of the League.

2335. The rating qualification in the counties is, generally speaking, 40 *l.* for common jurors, is it not?

£. 40 is the rating for a common juror, and then there is a different rating for the towns.

2336. But that 40 *l.* rating represents, what we call in Ireland, a strongish farmer in most parts of the country, does it not?

Yes,

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Yes, it ought to. If you look at the jurors when they come into the court-house, you can judge better of the class by the eye than by the mere rating.

2337. Have you any figure in your mind when you propose that the qualification should be increased?

I should be in favour of making a substantial increase, at all events. Lord O'Hagan's qualification, as well as I recollect, was 20 *l.* a year, and then that was increased tentatively, I think, up to 30 *l.* by the Act of 1873; and it afterwards assumed the form of 40 *l.*, with variations. I would be in favour of trying 60 *l.*

2338. Provided that by so increasing the qualification you did not diminish the number of the jury list to a point at which inconvenience would arise?

Certainly; I think that is essential.

2339. Have you considered whether anything could be done to attract into the jury-box a larger number of those more respectable jurymen who are now so frequently not to be found?

I cannot suggest any way of doing so, except by letting it be seen that any violation of the peace, or threats used to jurors, will be visited with the severest punishment. Practically, at present, there is no protection at all for a man who is Boycotted. If an edict goes forth that the most popular man is to be Boycotted to-morrow, I do not see how he is to get on.

2340. We have had a good deal of evidence in favour of having recourse more frequently to a change of venue when the trial is in a district where much excitement prevails; would you approve of that?

In Dublin at present that is so, and that is one of the things that I have to mention to the Committee. At present there are a vast number of cases tried in Dublin which naturally and properly ought to be tried in the country. I speak particularly of rent cases and ejectment cases. They are tried in Dublin, because there is a feeling that, before a special jury in Dublin, it is more likely that the parties will have justice than in the local venue, and that, in fact, it is of no use trying the case in the local venue. The result is an enormous increase of costs, and also a very considerable addition to the duties of Dublin juries. That is worked out at present by putting the venues in Dublin in civil cases.

2341. The change of venue in those cases, I suppose we may take it, does further the ends of justice?

I think so, but it is very sad to see, at present, the great number of cases tried in Dublin in which there is no defence whatever, and the result is, that an enormous amount of cost is thrown upon the plaintiff. The case is only for annoyance. The case is tried in Dublin before a special jury, and at a cost of, say 70 *l.* or 80 *l.* for nothing at all. It is a great pity that those cases cannot be disposed of in a more summary way, without putting the parties to the ruinous expense which is incurred at present, all for nothing.

2342. But that, of course, would be no reason for not allowing a change of venue where there really was legitimate cause for believing that justice would not be done in the locality?

If there was a case in which the venue was laid, say in Cork, or Kerry, and there was an apprehension in the mind of the defendant, that he would not get justice done, then he could apply for a change of venue. If the plaintiff chooses a Dublin venue, the presumption is, that he thinks he will get the better justice in Dublin, and then the defendant will object to that venue, if he thinks he will have a more favourable tribunal in the country; but at present, the plaintiff's venue is practically left unchallenged. In every action which is commenced, the plaintiff can lay the venue where he wishes; he can try the case in Dublin if he likes, and it lies upon the defendant, if he objects to the place of trial, to institute a motion before the court, whatever court there may be, the Common Pleas, or the Queen's Bench, or the Exchequer, and ask to have the case tried in the county where the cause of action arose.

2343. Is that the law in criminal cases as well as in civil cases?

No; in criminal cases, the venue is always local, and then if you want to have

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the case tried away from the locality where the crime was committed, on the ground that there has been influence brought to bear upon the jury panel, or that it is impossible to get a fair trial, then the Crown apply to have the case brought into the Court of the Queen's Bench, and order it to be tried there at Dublin, or wherever else they think proper. The result of the Winter Assizes Act is conducive to the ends of justice, because the prisoner is tried away from his friends.

2344. Are you satisfied with the existing procedure which you have just now described with regard to the application to the Court of Queen's Bench for a change of venue in criminal cases?

I am perfectly satisfied with it, but I would prefer a more direct means of having a change of venue. I think it might be left possibly to the discretion of the Crown to have a case tried in any reasonable venue when it thinks that the ends of justice might be more effectually attained thereby, because it is a matter of great expense to apply to have a case tried out of its ordinary venue.

2345. Have you given your attention to the English Act of Parliament, commonly spoken of as Palmer's Act of 1856?

No, I cannot say that I have.

2346. Some witnesses who have been examined here have represented to us that considerable advantage would arise if the summary jurisdiction of the magistrates were extended; have you formed any opinion upon that point?

I think it would be satisfactory if their jurisdiction was extended, especially in a certain class of case.

2347. In what class of case?

In those cases in which the verdicts of juries are unsatisfactory, or have a tendency to be unsatisfactory.

2348. Do you remember what is the maximum penalty that the local magistrates can impose?

I do not; but I think that witnesses will be examined here who will probably be able to assist the Committee, because they are acquainted with that question.

2349. But you would be in favour of extending the summary jurisdiction of the local bench in many of those minor cases arising out of agrarian matters which are now sent on for trial?

I would. I think that the punishment would be speedier and more certain. Of course, the great object in all punishments is to have the punishment reasonably certain, and at present it is extremely uncertain.

2350. And you look to the certainty of the punishment more than to the severity of the punishment?

I do; I think it is of vital importance that the punishment should take place at once, and with reasonable certainty upon a conviction.

2351. Have you any reason for believing that the magistrates very often send on cases that they might perfectly well deal with themselves?

I have not.

2352. When you say that you are in favour of an extension of the jurisdiction of the magistrates, should you contemplate that there might be any change with regard to the right of appeal from their decision?

There is an appeal at present.

2353. Would you leave that unchanged?

I would; I think the prisoner ought to have all the protection that he has at present. I would give any appeal that the prisoner has at present under any extension of jurisdiction. In some cases, possibly, the prisoner might not think it worth his while to apply for it. It has been known that on an appeal, the county court judge has increased the sentence of the magistrates. It so happened in Tipperary, in a Boycotting case, that the magistrates only gave a month, and the county court judge gave three months.

2354. Lord

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2354. Lord *Emly.*] In a case of appeal there is no jury, is there?
The county court judge sits with the magistrates; but I think the appeal in the petty sessions cases works satisfactorily enough. There is some prospect of certainty as to a conviction, if that is the tribunal which is to try the case.

2355. *Chairman.*] Does any other suggestion occur to you?
I do not know whether anything has been said about the right of challenge in civil cases; I am strongly of opinion that that right of challenge is most beneficial. Some of the leaders of the Irish Bar in the last Committee, I think, gave very strong evidence in favour of this right of challenge, calling attention to the fact that if there was no such right when the jury was about to be sworn, if the prisoner saw his personal enemy about to get into the jury-box he could not challenge him, because he could assign no cause. I think the working of this system of challenge is most beneficial in civil cases, and I think it is absolutely essential that it should exist. It does exist, as I have said, in felony cases, for the prisoner's protection; and it also exists in the power of the Crown to direct jurors to stand by in all cases in which the Crown prosecutes. In civil cases the plaintiff can challenge six jurors, and the defendant can challenge six under the recent Act.

2356. Earl of *Derby.*] You spoke of the expediency of raising the qualification of the jurors; would that in any part of Ireland, in your opinion, create difficulties, arising out of differences of religious opinion; for instance, would it not be said that it amounted, in Ulster, to a practical exclusion of the Roman Catholic element?
I am not acquainted with Ulster, and I am not able to answer that question; it works both ways; if you go down too low it might possibly have the other effect. I only make that suggestion, because I am not acquainted with the figures.

2357. I think we may take it to be the general purport of your evidence that while you think that some palliative may be applied to the present unsatisfactory state of things by an amendment of the constitution of the juries, still, upon the whole, you consider that the failures of justice which have occurred are due rather to the existing state of opinion, and to the general hostility against the execution of the law?
Very much; but I think that the palliative which I have referred to would be of great importance and ought to be applied, because that would give a chance, at all events, for the success of justice.

2358. Lord *Monck.*] I understood you to say with regard to the venue, that you would give to the Crown in criminal cases pretty much the same power as the plaintiff has now in civil cases of choosing his own venue?
Yes; the responsibility resting with the Attorney General, who, of course, is a member of the executive government, and who would act under a proper sense of responsibility.

2359. You would not propose to give increased powers to courts, or to individual judges, of ordering a change of venue, beyond what is now possessed by the Court of Queen's Bench?
No.

2360. I ask you the question, because a witness the other day suggested that the power of changing the venue which is now exclusively vested, as I understand, in the Court of Queen's Bench, should be conferred upon a single judge of assize?
I do not see how that would work. I think it would be convenient, if there is to be an application for a change of venue, that it should be made before the prisoner is there with his counsel and witnesses, ready for trial at a particular place. I think it would be inconvenient that he should be told that he should be tried in a different place, where perhaps that counsel and those witnesses would not be able to attend. If that power which I suggest should be vested in the Attorney General is not conferred upon him, there would be but little objection to making the application of a wider character than it is at present,

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present, and giving the power to other judges besides those of the Court of Queen's Bench.

2361. The application might, perhaps, be made to a judge at chambers?

Certainly; because, of course, if the case was one of great difficulty, the judge could refuse to exercise the jurisdiction. But very often there is a difficulty in getting a Queen's Bench judge; and I think there ought to be, most decidedly in all jury cases, some power vested in the judge of declining to take a completely perverse verdict. There is such a power in civil cases: I have seen a judge decline to receive a verdict; or he can make a statement to the court above, which will have the effect of at once inducing the court above to set aside the verdict, on the parties, of course, making the application to whom injustice has been done. There ought to be some such power in a criminal case, because it is a monstrous thing that when the judge has said to the jury, "There is the evidence, and there is the prisoner: it is your duty to convict him," they should return a verdict of not guilty. At present it is a very painful thing to hear the representative of the Queen tell the jury that they have only one duty to discharge, and then, when their verdict is returned in clear violation of his charge, for him to tell the jury, as he frequently does, that that verdict is contrary to the evidence. Surely there ought to be some power vested in the judge of declining to accept a verdict of that description.

2362. How would that work with the rule of law that a man is not to be tried twice?

That is a rule of the law; but the question is, are you to apply that rule of law to purposes for which it was not intended. That implies, of course, that the prisoner has been once acquitted, or once convicted, by a proper jury.

2363. Earl of *Derby.*] I presume that, if you modified the rule of law, and allowed a man to be tried a second time after acquittal, you would limit that to cases in which the judge was able to certify that the verdict was obviously a perverse one?

Clearly.

2364. It would not be enough for him merely to differ from the opinion to which the jury had come, but he must certify that, in his judgment, it was a perverse opinion?

I think he should be in a position that he should decline to receive the verdict. In other words, I would suggest that his action should have the effect of preventing the verdict being a verdict at all; in fact, that he should say, "Such a finding is entirely unreasonable, gentlemen, and I cannot accept it."

2365. But I do not understand you to say that you would extend that to every case in which the opinion of the judge happened to differ from that of the jury?

Not at all. Of course you will have to leave it vested in the discretion of the individual judge, who is presumably a man of great intelligence and of personal honour and rectitude; but I think that the power must be vested in somebody, in the interests of the community.

2366. But you would compel him, before he could exercise that power, to say publicly, "I consider this verdict to be not merely mistaken, but perverse, and a verdict at which the men could not have arrived in the honest discharge of their duty"?

Certainly; because no judge ought to interfere with the verdict of the jury, provided that, acting as reasonable men, they could have arrived at that result; and it is a power which, if exercised at all, would be exercised, of course, very sparingly, because the judge would be assuming a great burden of responsibility upon himself, which a judge would not be very anxious to encounter.

2367. Lord *Emly.*] There was a statement which you made, which I did not quite understand. You said that in cases that were brought up to Dublin very often there was no defence, and the plaintiff was put to an expense of probably 60 *l.* or 70 *l.*?

Yes.

2368. In

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2368. In cases where there is no defence, cannot costs be given against the defendant?

Certainly, but the plaintiff has to pay those costs, and he only takes his chance of getting them, which is a very remote one.

2369. Let us take the county of Tipperary, with regard to your suggestion of raising the qualification to 60 *l*; do you think that you would get a very much better class of jurors at a rating of 60 *l*. in Tipperary than you would at a rating of 40 *l*.?

I think you would get a better class.

2370. At all events, would you, at the present time, have any confidence in those cases that you have spoken so much about, in a fair verdict being given by a jury rated at 60 *l*.?

I think you would have a better chance; but it is impossible to make any absolute statement of what would follow the raising of the qualification. It appears that the Act of 1876 amending Lord O'Hagan's Act has not given very good results by raising the qualification from 20 *l*. to 40 *l*., and I would be in favour of further raising the qualification.

2371. I do not know that the experience of raising the qualification from 20 *l*. to 40 *l*. has been a very hopeful one, has it?

I do not think you can say that the ill results which have followed in jury trials have been caused by the raising of the rating. There is a tendency to find in jurors that intelligence rises with qualification; we cannot go beyond that.

2372. Do you consider that a much larger exercise on the part of the Crown of the right of change of venue, simplified in the way you have suggested, would meet the difficulties of the case; do you think that there are a sufficient number of places in Ireland in which one might reasonably expect to get fair verdicts now in such cases as you have been putting to the Committee?

No; in the country parts I do not think you would get any advantage from going from one county to another; but the change of venue which I was referring to would be a change of venue which would localise the trial in some of the cities, say the city of Cork or the city of Dublin. I think that would have a marked effect.

2373. And you would have confidence in juries in Cork or Dublin?

I am not upon the Munster circuit, but from what I have heard from the men on the circuit, and also from the judges, I have always understood that the Cork jurors were a very high class of jurors, who did their duty with remarkable intelligence and independence; and the city of Dublin jurors, I have already said, are very good jurors.

2374. Lord *Inchiquin*.] Your opinion with regard to the failure of justice is based almost entirely upon your experience in Leinster?

My experience is a Leinster experience, and a Dublin experience, so far as regards cases that come up to Dublin.

2375. You have no Munster experience?

No, not at all beyond what I read, as other members of the public do, and, of course, from knowing the members of the bar.

2376. If the qualification was raised, even as high as it was possible to raise it with due regard to having sufficient jurors, do you think that even then you would be able to get a satisfactory trial by jury at present in the south of Ireland?

I could not say so as a certainty, but it would have a tendency in that direction.

2377. It was suggested by one of the witnesses here that these agrarian cases and assault cases should be tried entirely by special jury; have you considered that suggestion?

I think that you would be much more likely to get convictions.

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2378. Do you think that that would be a better plan than depending upon the common jurors, and raising their qualification?
Certainly; because you would get a class of juror less likely to be swayed by outside influences, or by private motives.

2379. Do you think that, having these special jurors to try such cases, you could then depend upon getting satisfactory verdicts?
I think you would have a fair chance, possibly, of satisfactory verdicts.

2380. If trial by jury is to last at all, I suppose that is the extreme measure which could be adopted?
At the highest qualification that could be suggested that would give a qualification from 150 *l.* to 100 *l.* a year in Tipperary.

2381. Some of the witnesses who have given evidence here have given it as their opinion that the jury system has so entirely broken down that nothing at the present moment can be done, except to have a commission of judges to try these special cases, that is to say, that the Attorney General should have the power of recommending that these special cases should be tried by a commission of judges; what is your opinion with regard to that?
Personally, I am a great supporter of trial by jury, and I am very reluctant to give any power of that description to the judges; but I think that the time in which we live is of such a character that the power might be usefully vested in the Attorney General, as the responsible officer of the Executive, of requiring a certain case to be tried before a commission. But at the same time I think it is right to tell your Lordships that I do not think there would be very much use in that, because it would be a matter for the discretion of the Attorney General for the time being, and Attorney Generals' discretions are something like councils of war, they do not fight. I do not think the Attorney General would exercise the discretion.

2382. But do you think it would cause dissatisfaction in the country that these cases should be tried before judges?
Dissatisfaction among what class of the community? I think that all the classes who are afraid of being convicted would be vehemently discontented. The truth is, that the outcry in most of these matters comes from the class who are hurt by being convicted, and not from the class who are hurt by the criminals.

2383. Then, in the interests of justice, it would be more satisfactory that such a power should be given at the present time, considering the state of the country?
I think it might. I do not say that it would be actually used, but it might be a desirable thing to have such a power vested in the Attorney General. At all events, it would be a wholesome thing to hold up to jurors, that if they were to exercise their particular powers recklessly and improperly, the Attorney General might be brought upon the scene, who would have the cases tried by a Special Commission.

2384. Do you not think that that would be more satisfactory than giving the judge that which you just now suggested, viz, a sort of veto upon the decision of the jury, because it would practically amount to a new trial?
It would amount to a new trial, no doubt.

2385. Lord *Emly*] A new trial before a jury?
A new trial before a jury. Anything that would obtain convictions in proper cases would be of very great importance. How those convictions are to be obtained is a matter of difficulty: and, of course, you must always consider what are the feelings of the country in which we live, and the appearances.

2386 Lord *Inchiquin.*] You must also consider the exceptional times in which we live?
Yes. There is no doubt whatever that in Ireland the law-abiding classes of the

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the community look forward with very grave apprehensions to the coming winter.

2387. Viscount *Hutchinson.*] With regard to the power of the judge to put back the prisoner, and to refuse to receive a manifestly unjust verdict, that does not exist now, does it?

No.

2388. Supposing that some such power was given to the judge, what would be the effect of it upon the particular case?

As I understand, the result of that would be, that the prisoner could be tried again by a new jury, either at the same assizes or at the subsequent assizes. He would be put back exactly in the same way as if one of the jurors had become ill, and the trial had become abortive; he would be re-tried.

2389. In fact, it would not secure any greater certainty than is secured now when a jury disagree, and the prisoner is re-tried?

It would not secure greater certainty, except that perhaps the next jury would act better; or possibly, what was suggested just now by one of your Lordships might apply; that is, that if the jury was perverse, the case could be tried by the judge or two judges on a following occasion.

2390. In cases, for instance, of agrarian murders in Ireland, the jury have very often an alternative; they can either convict of murder or of manslaughter; and in a great many cases lately they have acquitted altogether, against the clearest evidence; do you not think that if some power such as the noble Lord has suggested were vested in the Attorney General, or in anybody else, in the case of unjust verdicts, to try a case before a Commission, that would have an effect upon the juries, and would make them more likely perhaps to convict the prisoner of manslaughter for fear that a Commission might convict him of murder?

At present, in murder cases, it is often left to the jury to convict of manslaughter, although there is very little loophole for doing so, in order to get a conviction. I think if there was an apprehension that the case might be tried before judges who would act upon the strict letter of the law, without any considerations of mercy, the jury might convict in order to save the prisoner from the danger of being so tried.

2391. *Lord President.*] Does your remark as to the failure of the present jury system apply equally to the time when your experience began, that is to say, immediately after Lord O'Hagan's Act, or does it apply only during the recent agitation?

My impression is that it has been going on. It was originally bad, and it is getting worse.

2392. But you draw, I presume, a distinction between the present condition of the country and the ordinary condition of the country?

I think the Jury Act of 1876 was a decided advance on the Act of 1871; but recent times have destroyed any benefit which could be expected from it, and I think we have been drifting from bad to worse.

2393. But if we returned again to a normal state of things, as we hope we may, do you think the system would break down then?

I do not see how we can return to the normal state of things, unless there is some certain punishment inflicted for crime. It is the story of the axe and the handle cutting down the tree; where are you to begin? My opinion is that unless the law is enforced in Ireland we shall get from bad to worse.

2394. That is as long as the class who constitute the juries are in favour of the prisoner instead of in favour of the law?

At present respectable members of society have no protection independent of the system of juries, and at present the country is in a dreadful position. As I told you in the Charleville case, the innkeeper relied upon the impotence of the police, because they had been driven to their barrack in December last.

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2395. But on the hypothesis that we do return to what I may call the normal state of things, would the juries, in your opinion, still break down?

I do not understand what is meant by the normal state of things. If you suppose that the land agitation will become obliterated from their minds altogether, the influences which I have mentioned, and which at present invalidate their verdicts, would become non-existing, of course.

2396. I was alluding to the state of things, say in 1874, when there was no active agitation?

I think that verdicts were then more satisfactory.

2396.* Do you consider that juries break down in intelligence, or is it from being open to fear and sympathy?

I think they break down in both ways. I do not mind so much the intelligence of the juries, because the cases that are tried in the county before common jurors are cases of a very simple character within the scope of their intelligence, and they seldom have to discuss a case of any real difficulty; if there is a case involving nice considerations of law or fact, that is usually tried before a special jury, which is a fairly competent and intelligent tribunal; but the common jury cases are simple enough, such as the warranty of a pig, or matters of that description. The country peasantry are not, of course, a very intelligent class, but I think they are intelligent enough to understand a case of that description, or a case as to who is to get the stakes of a race. Some of them are naturally intelligent people, as your Lordships well know, but I am afraid of the influence brought to bear upon those jurors, which is simply intolerable.

2397. You are more afraid of that than you are of their want of intelligence?

Yes.

2398. Waterford would be the most important town in your circuit, I suppose?

Yes; there are some good jurors in Wexford, of course.

2399. Are they upon the panel?

Yes, the Wexford jurors are the best jurors we have on our circuit; they are very intelligent. There are Wexford townsmen on the jury, but the Wexford jurors are the most intelligent that we have.

2400. As to the change of venue, are you satisfied with the way in which the Waterford jurors tried the cases that went there that did not belong to the actual locality?

In cases in which the influences which I have mentioned are at work, there is very little use in going to the country parts at all. As I told your Lordships, the cases are nearly all tried in Dublin.

2401. But in Waterford, I understand, at the last assizes there were a good many cases from other localities; those are the cases that I am referring to?

I understand that the jurors did their business fairly enough in those cases. As I told your Lordships, the result of the winter assizes has been to take away the prisoners from the friendly jurors, and to bring them among strangers, who, of course, have not the same sympathy with them.

2402. As to the Dublin jurors, at the present moment, do you think that a Dublin jury would satisfactorily do its duty in an agrarian case of a criminal kind?

If there was a proper power of stand-aside exercised by the Crown, I think that a good jury can be obtained by going through the Dublin panel. If you were to take the first 12 names at random or any of the lists, the special jury list, or the common jury list, I do not think you would get a conviction if you were not to exercise some power of exclusion; but I consider that if the Crown had a free power of stand-aside, such as it has at present in cases which are not tried under the old system, a conviction would be reasonably probable in a proper case.

2403. You

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2403. You made some remarks about the old power of selection by the sheriffs; would you, yourself, propose to go back to that system in any way?

It is the only system that I can see of bringing intelligence or responsibility to bear upon the panel at all. I am not in favour of mechanical apparatus for selecting juries.

2404. Would you be in favour of leaving it to the sheriff?

If the duty could be entrusted to some responsible officer who had no interest that could be suggested in manipulating the panel, I should prefer that.

2405. You referred, I am afraid, to some districts in which the class from whom the jurors are drawn have sympathy with the criminal?

I should think so.

2406. In some of those cases, for instance, in Tipperary, was there any distrust of the old system of selection by the sheriff?

I think that there was fear of conviction, but I would not say that there was distrust. For instance, supposing that there were men up for an assault, or for any ordinary crime, they knew that the sheriff was likely, in choosing his jury, to choose men who would not be specially favourable to prisoners; that is, men who were not guilty of the same crimes, men who were not cousins of the prisoner, and things of that description. That was the feeling, I think, that the class had.

2407. You made some remarks as to the system of standing-by in large numbers, and you said you thought that it had nearly as bad an effect as the old distrust that might have existed of the sheriff; the direction to stand aside is done in open court, I suppose?

It is.

2408 You do not consider that there is any distinction in favour of that?

I think it is a very strong thing I do not think that that is any protection, against suspicion, because the Crown Solicitor gives no reason. As each juror is called, the Crown Solicitor asks a question of the policeman, and says "Stand by." That man is called by the Crown as a fit man to try the case; he is decided by the Legislature to be a fit man, and the Crown Solicitor, without stating his objection, tells the man to stand by. I think the effect of that is to suggest to people that there is more packing than there would be if the sheriff had the power of selection.

2409. But the distrust is directed then against the Government officer rather than against the sheriff?

Yes; I think it is thrown upon the officers of the Crown, the class who of all others in Ireland are the most suspected.

2410. That would be so in any case, I suppose?

I do not think that the word "suspicion" is a right word to use in cases of this description, because it is more fear than anything else. I do not think that there was any suggestion on the part of criminals that the juries were not fairly constituted under the old system of selection by the sheriff. There may have been in the north, with which, as I have already stated, I am not acquainted; but I think there was a fear that they would be convicted by a proper jury.

2411. I understood you to say that you thought that the prisoner's right to peremptory challenges might be limited or diminished?

Yes, it might be limited.

2412. But you think it is necessary that he should have a certain amount of peremptory challenges?

In misdemeanour cases I fail to see why there should be a different law in Ireland from what there is in England. A prisoner has always a right of challenge if he can show cause.

2413. But you give the right of peremptory challenge to some extent, even in misdemeanour cases?

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There is at present a right of peremptory challenge in misdemeanour cases, but I am not in favour of that, because I do not see why that right should exist in Ireland any more than in England.

2414. But I understood you to say that a man sometimes saw his enemy in the box, and yet he could, perhaps, not give a satisfactory reason for excluding him from the jury?

Yes, but I consider that any impulse of spite that a man might have in a criminal case would be entirely overborne by the far broader feeling of his brother jurors.

2415. To what number would you limit the peremptory challenges?

I do not see any necessity, as I have already stated, for peremptory challenges in misdemeanour cases, but they are limited to six.

2416. And you would take away those six?

I do not see any necessity for them.

2417. But in other cases, in cases of felony, would you leave them as they are?

I think that 20 challenges is a very large number to give, but at the same time any legislation would be encountered by the difficulty that there are 20 challenges allowed in this country. But I would be in favour of limiting the number of challenges, because it appears to me to be excessive.

2418. The noble Lord on my left said something about the influence that having a special commission without a jury to try cases would have on the juries, that they would be very often likely, instead of bringing in a verdict of murder, to bring in a verdict of manslaughter, but a jury does not always have an opportunity of giving a verdict of manslaughter in a case of murder?

They practically have in nearly every case in Ireland.

2419. You may remember a case that was tried at Maryborough where eventually the prisoner's sentence was remitted because the question of manslaughter was not put to the jury?

In my experience in every case in which a murder has happened under any circumstance in which there may have been a quarrel, there is a disposition on the part of the Crown and the judge to give a loophole to the jury to convict of manslaughter, even although there is no evidence at all of manslaughter, because it is considered a desirable thing, if possible, to have a conviction when the guilt of the man is clear.

2420. This particular case goes against that, because, although the case lasted over 50 days, that question was never submitted to the jury at all?

Perhaps the length of the trial explains the omission.

2421. Lord *Monck.*] A noble Lord asked you what would be the effect of giving to the judge the power which you propose of disapproving of a verdict; it would have legally the effect of a Scotch verdict of "Not proven," and that man could be tried again, could he not?

Yes. Possibly that might be an improvement in Ireland. Very often a trial fails in consequence of one of the Crown witnesses having been got at. I remember a very strange case of that kind where the prisoner was acquitted when the verdict ought to have been "Not proven," assuming that such a verdict does not exclude a second trial. The case was tried at Clonmel. The father of a little girl had a brother-in-law who was a cripple in bed. He sent the little girl away to mass and he murdered this unfortunate cripple. There was no one who could prove his guilt, but this little girl who returned at the moment when he was secreting his victim's money. The little girl was introduced by the counsel for the Crown as a miracle of honesty and piety, and indeed she was a paragon of a little creature. But unfortunately, influences had been brought upon her before the trial, and the little girl said she did not know the nature of an oath, and this wretch was acquitted on that ground. He was indicted thereupon at the next assizes for the larceny of the money upon the dead man. The little girl in the meantime had been brought to

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to a proper sense of her duty by her clergyman, and she told the truth then, and the man was convicted, and got seven years for the larceny. I think it would be very convenient in a case of that description that the jury should have the power of returning a verdict of "not proven," so as to enable the Crown afterwards to go for a conviction. I believe in Scotch law such verdict is legally equivalent to "not guilty," and that a prisoner cannot be retried.

2422. You were asked as to trying cases by the special jury panel, and you said, with reference to the venue, that you think it would be a very good thing, as I understand, to give to the Attorney General the same power of selecting the venue in criminal cases that a civil plaintiff has in civil cases; would you give the Attorney General the same power of applying for a special jury, which I believe a civil plaintiff has now?

Possibly that might be an advantage. Of course in any case in which the venue was changed from the country it ought to be thrown upon the Crown to provide for all necessary expenses thereby put upon the prisoner, because it would be a hard thing for a prisoner to be brought up from the extreme part of Ireland and not to have his expenses paid for his witnesses, and so forth.

2423. You think it might be worked in that way to give the Crown the right of applying for a special jury in the same way as a civil plaintiff may apply for it now?

Yes, I think that would be an advantage. Of course the Crown would only exercise that power in a fitting case and under their responsibility. A civil plaintiff has an absolute right of having a trial by special jury at the peril of costs, and the defendant has the same power.

2424. Lord *Emly.*] Does it occur to you that there would be any objection to allowing the judge in a case in which he had refused to receive a verdict at once to direct a change of venue?

I think that would be a great advantage; because, of course, the inference would be that a judge who would adopt such a very strong course as declining to receive a verdict would think that the tribunal and the place were entirely unfit for the calm discussion of the case.

The Witness is directed to withdraw.

MR. THOMAS BOYD, is called in; and is Examined, as follows:

2425. *Chairman.*] I BELIEVE you are Sessional Crown Solicitor for Tipperary?

I am.

2426. How many years have you held that office?

Something over 12 years, I think.

2427. And your official duties give you plenty of opportunity of observing the composition and conduct of juries?

Very great opportunity. No one, I think, has more opportunities of judging of them in the criminal department; I have nothing to say to the civil department.

2428. Would you state to the Committee, in the first place, whether, as far as you know, the character of the juries underwent a very considerable change in consequence of the legislation of 1871.

A very considerable change, and I found them before the change very unwilling to convict. I became acquainted with them, I think, in Tipperary, in the year 1868, and Lord O'Hagan's Act did not come into operation, I think, until 1871 or 1872.

2429. You found before 1871 that there was great unwillingness to convict?

I found great unwillingness to convict.

2430. Did you find that in any particular class of cases?

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In assaults and taking forcible possession of lands. I found no great unwillingness to convict in larceny cases; but I found great unwillingness to convict in rescue cases, and I found at that time a system of canvassing jurors.

2431. Did you find that that unwillingness to convict in this particular class of cases increased or diminished after 1871?
It increased to such an extent that it was almost impossible to get a conviction.

2432. We know that certain changes were made in the law subsequently to 1871, that the qualification was raised in 1873, and raised again in 1876; are you able to connect with those changes any alteration in the disposition of the juries?
There was no perceptible alteration at all.

2433. But you have found that the same unwillingness to convict in those cases which you had observed before 1871 has continued since?
It has increased to a very alarming extent.

2434. More particularly of late?
Up to this late agitation.

2435. Would you kindly state to the Committee what are the reasons which, to the best of your belief, induce the juries to behave in this manner?
I think it is on account of the class of persons who are on the jury, and their entire sympathy with crime, or perhaps with the criminal.

2436. With the criminal as a person who has violated the law generally, or who has violated a particular law which is objectionable in their eyes?
I would say that they are in sympathy with crime; and that there is an unwillingness to punish people for committing crime.

2437. But if the juries are only unwilling to convict in a limited class of cases, would not that point to the conclusion that their sympathy is not against the whole of the law, but only against a particular part of the law?
I would qualify that with regard to larceny or cattle stealing. They are rather inclined in those sort of cases to do justice, though they will willingly give the benefit of the doubt, and very properly so, to the party charged in those cases. Still I see even in larceny cases, a desire if they can, to strain a point in favour of the prisoner. In a case of burglary, for instance, I have seen a most outrageous verdict.

2438. Are there are any other causes at work besides this sympathy; are the jury, for instance, actuated by the fear of consequences?
I do not know that they are very much actuated by fear; I daresay there is some fear, but I cannot speak from personal knowledge of that fear. I am sure there is a very strong fear on the part of jurors who live in the country associated with those people, and with their friends or connections. Beyond that I do not think I should be justified in stating to your Lordships that there is such fear.

2439. In the class of case where they are willing to do their duty, have you observed any want of intelligence upon the part of the jury?
There are some of them who are very intelligent. The lower order of Irish, if they are not prejudiced by something operating on their minds, are very intelligent people. I am speaking now of the class of jurors who come from what I call the lower orders; they are mostly selected from the lower classes of the people.

2440. They can understand the evidence?
They can understand the facts very well, but as to applying the evidence, I will hereafter explain to you something about that. I do not think they wish to understand the difference between evidence and statement. I have the greatest difficulty in my prosecutions in endeavouring to persuade them that they are not to act upon the statements of an advocate, or upon their own feelings as compared

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compared with the evidence. In fact, I would say that a great number of the jurors go into the jury-box under the impression that they have some piece of patronage to bestow, or some exercise of power and discretion; and I have often had occasion to tell them so in my addresses to them.

2441 But they are disposed to give a prominent place to their own feelings, and they naturally do so more where the case tried is one in which their feelings are much appealed to or excited?
Just so.

2442. Will you state to the Committee what is the class from which those jurors are usually drawn?
From the farming class. I should say that in Tipperary the per-centage of any other class is scarcely perceptible. There are a few shopkeepers in the towns, but all the rest are of the farming class.

2443. You are not able, I suppose, to supply us with any approximate figures as to the proportion?
That is very easily got at by the jury list, which gives the occupation. I have never analysed it myself, but I have looked upon all the jurors as belonging to the farming class, with one or two here or there, but very rarely, belonging to any other class. But the jury book will at once show that.

2444. Do the few persons who are on the jurors' book, and who are not of the farming class, take their share of service on the jury?
I really cannot bring to mind that there is one in 50 cases of a gentleman, or of a person not belonging to the class that I have mentioned, appearing on a jury.

2445. How comes that about?
They do not attend. They are a very small class, too.

2446. But I presume that, however small their number, the service of that class on juries mixed with the inferior class, would be advantageous, would it not?
Of course it would.

2447. Is there no means of enforcing their attendance?
They will attend, but the class is so small in itself.

2448. I thought I understood you to say that they did not attend?
They attend sometimes, but the number is so very small. Then their names are put into a ballot box, and then they are called out on the ballot, although they may be in court they may not be called on the jury. I suppose your Lordship is aware of the process that is gone through in empanelling the jury. The names are given to an officer of the court, and the names are called over; and after they are all called, the names which have been put on cards before hand are put into a ballot box, the box is shaken, and then they answer as drawn. There might be 10 gentlemen on the list, and it might so happen that not one would be called upon to answer.

2449. But supposing that such persons were present and did answer, what then?
They would be made to attend.

2450. We have been told that there are a variety of circumstances which tend to exclude such persons from the jury-box, and, amongst others, the manner in which the right of the challenge conceded to the accused is exercised; is that your opinion?
I suppose that, probably, I conduct more prosecutions than any other official in Ireland in a small limited way; last year, I had about 280 or 290 prosecutions; and I could not charge my memory with ever exercising the right of challenge six times in all those prosecutions. I think it is a most invidious thing, and that there is very little advantage to be derived from it in the county of Tipperary.

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2451. You are now speaking of the right which the Crown has of ordering jurymen to stand aside?
Yes.

2452. My question was rather directed to the right allowed to the accused of challenging a certain number of names peremptorily?
That right, speaking generally, is exercised in one out of 10 cases. They are quite satisfied with the list of jurors, speaking now exclusively of my own observation. I have in some instances seen them challenged, but I never saw them challenge 20, or anything like that number.

2453. We have been told that, in some districts, it is the invariable practice of the defendant's attorney to challenge any person who is obviously a member of the more respectable classes, and who would consequently be likely to take an independent view of the case; is that so in your district?
Those are the men that I have seen myself challenged by the prisoner.

2454. Frequently?
Not at all, because the opportunity is not given to them. There are not that class on the jury.

2455. Will you give us the benefit of your opinion with regard to a point upon which we have received some evidence, viz., the manner in which the summary jurisdiction of the local magistrates is now exercised?
I think it is exercised very satisfactorily.

2456. It has been stated to us that a great many cases are sent on by the local magistrates which might perfectly well be disposed of by them?
The contrary, I believe, to be the practice in my county. I think they dispose of the most aggravated cases, sometimes at the petty sessions, which I doubt, in strictness, whether they have power to do.

2457. What is the maximum penalty which the local magistrates can impose?
Two months' imprisonment in the case of a common assault. For assault on a constable, or a woman, or a child of tender age, I believe they have power to give six months; and, in Boycotting cases, they have the power of giving six months. There is a very large code. In assault cases, the local magistrates very often give two months, whereas if they were sent to the sessions and found guilty, they would probably get six, or eight, or 12 months. My idea is, that the magistrates are always afraid that if they send them to quarter sessions, they will be acquitted, and they think it better to take the power into their own hands. There was a circular issued from the Executive that those serious cases were to be sent for trial to the quarter sessions, and that is the explanation which is given by the petty sessional magistrates, and probably it is a very sound one.

2458. But in minor offences of that kind, I presume you would be content with the prompt administration of justice and a comparatively mild penalty?
Yes, I would; I think it is folly to send those small cases before a jury; I have known small cases of assault to be sent before a jury, though not as a rule, and I have known the circumstance to be commented upon by the solicitor for the defence, and I have known the jury to act upon those observations of the solicitor, and acquit the accused, contrary to all the evidence that had been given, merely because it was a simple case that might have been decided elsewhere.

2459. Lord *Tyrone.*] Would you be inclined to increase the power of dealing summarily by the magistrates?
As to the extent of punishment, I would.

2460. Would you increase the number of offences with which magistrates can deal summarily?
I would, for instance, in the case of rescue by a bailiff. I think it is a monstrous thing to be sending these rescue cases to quarter sessions. The parties mostly get off, and there is a great deal of trouble and expense in them; and even if they are found guilty they get a very small sentence indeed, sometimes a week

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a week or a fortnight. They constantly settle these rescue cases, and are sometimes made for the purpose of enforcing the settlement of a debt, I think.

2461. I understand you to say that you would increase the power of the magistrates to deal summarily with many cases, and not merely rescue cases?
I would. I would give the magistrates the power of disposing of cases of forcible possession where the evidence was very clear. For instance, supposing that the sheriff had taken possession of a farm and given possession to the plaintiff in the ejectment, or the decree under which he took possession, and there could be no question of dispute as to property or right of any kind, I would give summary power to the magistrates.

2462. And you would increase their power of punishment?
I would.

2463. *Chairman.*] In a case of that kind would you still leave to the accused person the right of appealing to another tribunal?
I think that that would be fair enough.

2464. Under the existing law has the accused person a right of appealing, or merely of exercising an option whether the case shall be summarily dealt with by the magistrates, or whether it shall go on for trial?
In all cases where he is summarily adjudicated upon to the extent of, I think, one month's imprisonment; I am not quite sure as to the fine, it is either 1 *l.* or 2 *l.*; in all those cases where they exceed that there is a right of appeal given indiscriminately to every party that feels himself aggrieved.

2465. That is an appeal from the decision of the bench to the quarter sessions?
Yes, and the magistrate that appears at the quarter sessions, in conjunction with the county judge, if he adjudicated upon the case at petty sessions, is precluded under a recent Act of Parliament from taking part in that appeal. I had a case at Thurless some time ago, and I think that there were seven magistrates who sat upon the case at petty sessions, and the appeal was to the county justices and one magistrate; however, I call that a very fair and proper provision when magistrates have already adjudicated upon the case.

2466. Has the law undergone any change of late as to the right of the magistrates to sit?
Yes, within the last three or four years, I think.

2467. *Lord President.*] As to appeal?
Yes.

2468. Before that, was there no right to appeal to quarter sessions?
The right of appeal has existed since 1851 or 1852, by the 14th & 15th Vict., which is commonly called the Petty Sessions Act; but the justices that are to try the appeal are excluded, if they have taken part in the case, and that, I think, is proper legislation.

2469 *Chairman.*] Do you wish to make any other suggestion to the Committee for dealing with this difficulty which you have encountered in the case of common juries?
I would suggest that all cases of an agrarian character, or of such a character as the Attorney General, by his fiat would direct, ought to be tried at quarter sessions by a county judge, and the magistrates assembled there with him, instead of by the jury; that is, that they should try the case without the assistance of a jury, exactly as is done at the petty sessions.

2470. That the cases should be tried at quarter sessions without a jury?
That they should be tried at quarter sessions by the county court judge and his brother magistrates without a jury.

2471. Would you make those recommendations with regard to all agrarian cases?
I think the Attorney General ought to have the power of directing whether such

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such a case should be tried by that tribunal or not; he is responsible for all the prosecutions. If that were not done, then I should say that all agrarian cases, and cases of forcible possession, should be so tried; but I think that it would be better to leave it with the principal prosecutor; he has the power to direct that no prosecution shall take place, if he wishes.

2472. Lord *Tyrone.*] I understood you just now to say that the power of challenge by a prisoner was not much made use of.
Not by me.

2473. But by a prisoner?
Very seldom, for the reason I have mentioned.

2474. One witness here stated that the fact of the matter is, that a man with a good coat could not get on a jury; is that your experience?
No, I do not go that length; I think some of them have very good coats, though they may not be very sober when they get on the jury, unfortunately, in many instances.

2475. You do not seem to think that there is much in the question of challenge, one way or the other?
I do not.

2476. Lord *Monck.*] You said that the right of challenge was very seldom exercised by prisoners in Tipperary; you also said that the jurors are almost all of one class?
They are almost all of one class.

2477. Does not the character of the crimes which are generally tried, agrarian crimes, and crimes of that class, account for the failure of justice which sometimes takes place?
I have no doubt that it does.

2478. With reference to your suggestion that all agrarian crimes should be tried by the county court judge, and the magistrates at the quarter sessions without a jury, do you not think it is desirable that the class of persons who are to be tried should be satisfied of the impartiality of the court?
They have the same means at petty sessions at the present moment.

2479. But there is an appeal from petty sessions?
There is an appeal from petty sessions, but that appeal after all is not very much exercised.

2480. Is not the effect of the right of appeal from the petty sessions, in all cases over a 1 *l.* penalty and a month's imprisonment, to transfer the trial at the option of the prisoner to the quarter sessions?
It is.

2481. Whatever decision the magistrates arrive at, the prisoner can take their decision to the quarter sessions for revision?
Clearly.

2482. Therefore it practically transfers it to the quarter sessions?
Yes.

2483. *Lord President.*] When this appeal is carried to the quarter sessions, is it to the chairman and magistrates, with a jury or without a jury?
Without a jury, only excluding magistrates that have adjudicated below.

2484. Lord *Monck.*] Therefore, in point of fact, the proposal that you make would be to transfer the trial in the first instance to the county court judge and magistrates at quarter sessions, instead of doing it by way of appeal?
That would be so, and I think that is a better remedy than letting them go scot-free.

2485. Do you think that that would be a satisfactory thing, considering the nature of the offences which you would wish to transfer to their jurisdiction and the class from whom the magistrates are necessarily taken?

I think

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I think crime ought to be put down and punished, and I cannot suggest any more satisfactory way of doing it.

2486. What I mean is this: that almost every magistrate is necessarily of the class against whom agrarian outrages are perpetrated?
You are quite right, generally, but there are many exceptions.

2487. Lord *Emly.*] You stated that before 1871 you found great unwillingness in the county of Tipperary in certain cases, on the part of juries, to convict; was that at assizes or at quarter sessions?
I speak only of quarter sessions.

2488. Lord *Inchiquin.*] Do you not think that it would be more satisfactory in these special agrarian cases, at which you cannot get convictions now, that the prisoners should be tried before a commission of judges, rather than before the chairman of quarter sessions and magistrates?
I think if they were tried, as I suggest, by the county judge and magistrates, the people would soon begin to have confidence in them. I think, after consideration, that is the best suggestion I could make for the disposal of these cases. Trying them by commission would be attended with great delay and great expense, and I think the quicker people are tried the better.

2489. *Lord President.*] I suppose you have had considerable experience of all criminal cases that have happened in Tipperary?
Almost every case. I investigate the capital cases for the assizes, and I prosecute in almost all the other cases.

2490. With regard to evidence, we hear that the juries are liable to be influenced either by sympathy or by fear; does the same influence extend to the witnesses?
I think it does; I think the witnesses are very anxious to give a chance to the prisoner, if it is possible.

2491. A good many cases have occurred in Tipperary within your memory where there has been a difficulty in bringing the case at all to trial on account of the want of evidence?
The great difficulty is the extraordinary verdicts that the juries find. I think there is very great reluctance on the part of witnesses.

2492. There have been a good many cases of a serious character since you have known the county where there has been really an impossibility of bringing the case before any tribunal, have there not?
I have experienced great difficulty in all cases, such as manslaughter cases, and murder cases, but I will not say that I have experienced, to the same extent, difficulty in my own ordinary prosecutions.

2493. Have you known cases where, after the commission of a crime, not a single witness has come forward from the whole townland where the people were all living?
I have known a great many of those cases. The other day I was directed by the Government to go down and prosecute. There were 300 men assembled in the broad daylight, and they attacked a poor man who was doing nothing but driving home a load of hay belonging to a gentleman who was Boycotted; he was guarded by five policemen, but the policemen happened to be strangers. I got hold of the poor-rate collector in the district who was present, and I had him summoned; he lived within half a mile of the spot, and he necessarily, from the nature of his business, was obliged to see the people there every year. He was examined, and he declared on his oath, in the most solemn manner, that not one single creature in that crowd of 300 did he know.

2494. And that often takes place?
That occurred the other day.

2495. I suppose a good many crimes have occurred in Tipperary where there has been no trial at all?
A great many.

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2496. The other day we had it suggested that it would be sufficient to improve the juries at assizes, and not to alter the juries at quarter sessions; what would you say as to that?

I would try them by the same tribunal.

2497. A great many important cases come before the quarter sessions, do they not?

Yes, and most important cases; cases in which people's lives have been almost taken away.

2498. If juries break down at assizes, they will equally break down at quarter sessions; and, therefore, you would desire, if any change was made, to make it in both cases?

Quite so; I cannot draw any distinction at all between the two cases.

2499. Do your remarks apply to ordinary times, as well as to these?

To ordinary times; I have very little information to give you about extraordinary times, except that assemblage of 300 people; I speak especially of the last eight or nine months.

2500. Your remarks apply also to other crimes as well?

To other crimes more especially. There is an increasing desire to let the criminal out of the dock. I was about telling your Lordships of a case, not of an agrarian character, but of burglary, where a man was brought up in the town of Cahir for having some housebreaking implements in his possession, and he would be subjected to a long term of imprisonment, or I believe to penal servitude, for it. The evidence was as clear as daylight, and could not be disputed; he had been previously convicted of burglary; the policeman arrested him at two o'clock in the morning, on the bridge of Cahir, with these implements in his possession; his solicitor addressed the jury, and told them that the implements belonged to a donkey cart, and he was bringing them to the smith to get them repaired; and he wound up by saying, that he regretted that the prisoner was so poor that he could not get the smith to come and give evidence. In the end, the judge reprimanded him very severely indeed for having introduced these topics when he was not in a position to prove them, and he told the jury that they could not act upon it. The jury retired, and after about an hour they came out and asked what the name of the smith was whom the judge had told them that they had nothing to say to. They then retired again, and brought in a verdict of not guilty.

2501. That was entirely want of intelligence; there could not have been any sympathy with the burglar, I presume?

I do not know what it was, but it shows the state of things that exists. Mr. Gibson told your Lordships a short time ago about verdicts which had been given. On more than one occasion the verdicts were so glaring, no evidence being produced on the part of the prisoner, that I have asked the judge not to receive the verdict of "Not guilty," and on more than one occasion I have got the judge to say to the jury, "As there is no defence here at all on the part of the prisoner, and as the evidence is not impeached, I must ask you to reconsider that verdict," and they have gone back and brought in a verdict of guilty.

2502. Where they had once delivered a verdict of "Not guilty" they have retired and then found an opposite verdict?

Exactly. That is the law, but if they persisted in saying, "We will adhere to our first finding," it would be the duty of the judge then to record that verdict.

2503. But the judge under the law has the power of sending them back to re-consider their verdict?

It is a power which he is very unwilling to exercise; but he has in one or two cases exercised it after I have called his attention to the subject.

2504. Are you speaking now of a judge of assize?

No, I am speaking of the county court judge.

2505. Lord

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2505. Lord *Inchiquin.*] If the jury choose to adhere to their first verdict the judge has no power of refusing to receive it?
He has no power.

2506. *Chairman.*] I am not quite sure whether I understood an answer which you gave to a noble Lord just now; I understand that, under the existing law, in cases of summary jurisdiction where the penalty imposed by the magistrates exceeds 20 *s.* or a month's imprisonment, the defendant has a right of appeal to the quarter sessions?
Yes.

2507. Are you satisfied with that arrangement, or would you propose to make any change?
I think that that is a very fair thing, and I see no reason why it should be disturbed.

2508. In that case would the trial be without a jury?
It is without a jury in both cases. There was a Boycotting case where the magistrates sentenced a prisoner in Thurles to a fine of 20 *l.*, or in default of payment to three months' imprisonment. It was a very aggravated case, and the appeal was frivolous and vexatious in the extreme; and I asked the county judge and magistrates to change the penalty and to make it three months' imprisonment without the option of a fine, and they adopted that course, which I think tended to quiet that part of the country for a considerable time. In other cases they have increased the punishment for me from three months to four months on appeal.

2509. Lord *Monck.*] Had that change of sentence the effect of getting rid of the appeal on the part of the convicted person?
It was made on the hearing of the appeal. It had a wonderful moral effect.

2510. I think the only suggestion that you made as to any change was that you would have agrarian crimes and crimes of that character tried by the county court judge and the magistrates at quarter sessions; may not those crimes all come before the petty sessions in the exercise of their summary jurisdiction?
Nearly all the cases that are sent for trial to the quarter sessions are first investigated at the petty sessions; but in cases of riot or rescue, for instance, there is no summary jurisdiction.

2511. *Chairman.*] Those are cases over which the magistrates have now no jurisdiction, and you think that the law should be amended so as to give the magistrates a jurisdiction which they do not possess?
I do.

2512. Without increasing their power of inflicting punishment beyond what they at present possess?
I would give them power to send the prisoner to gaol for six months in an aggravated case. I think that six months' imprisonment would be perhaps enough.

2513. In short your proposal is that the jurisdiction of the bench should be increased, but that its power of inflicting punishment should be what it is now?
For instance, in assault cases, in which only two months' imprisonment can be inflicted, I would give the magistrates power there to sentence the man to six months.

2514. Lord *Emly.*] I think that in certain cases the magistrates have the power of inflicting six months' imprisonment?
That is so in the case of assaults on constables, or on women and children; but in the case of an assault upon a man I would give the magistrates power to sentence for six months, and I do not know that it would be wrong to extend it even beyond six months.

2515. *Chairman.*] Are there any other points which you would like to bring before the Committee?

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I think the qualification ought to be increased. In our county I find that the number on the jurors' books is 2,655; I think that is an utterly useless number, and that half that number would be enough for all purposes.

2516. You would increase the rating qualification?
I would increase it, certainly, to 60 *l*, and I think, judging from casual perusal of the list, that that would give more than 1,000 persons qualified to act as jurors in Tipperary; and, surely, that is enough.

2517. Viscount *Hutchinson.*] In both Ridings?
In both Ridings.

2518. Lord *Tyrone.*] One of the witnesses that we have had before us suggested that clergymen's sons, farmers' sons, gentlemen's sons, doctors, and various other people of that sort, should be added to the jury list without a rating qualification; would you approve of that?
That was one of the suggestions that I intended to make to your Lordships. The exemptions, I think, are too great. I think there are a lot of persons who might just as well attend the sessions or assizes who are at present exempt.

2519. *Chairman.*] But the noble Lord's question rather suggests, not a diminution of the exemptions, but an increase in the different qualifications?
I would be in favour of any intelligent person being liable to serve on a jury. This list of exemptions includes civil engineers, public notaries, and actuaries, professors, schoolmasters, teachers in colleges, and so on. I protest I do not see why they should not attend as well as a farmer who has his place to mind, and whose business has to be attended to, and they are a very intelligent class of people. Then there is a general clause here that anyone who is receiving pay under any local authority shall be exempt; I doubt very much whether such persons ought to be exempt. I think that any respectable, intelligent man, except he is a lawyer or a clergyman, or a judge, ought to be put on. I would limit the exemptions very much, and I certainly would also add to the list of persons liable.

2520. Have you any other suggestion to make?
With respect to the way in which the lists are revised, in my opinion those lists for the preparation of the final jury list, would be better revised at the petty sessions of the district than in the way in which they are revised now. There is no question of law to be decided at all, and the county judge is a person who sits in four different places in Tipperary, and he brings all the different officials from the different districts to attend him at those four different places; he has no personal knowledge of any of them; whereas, if the revision took place at the different petty sessions, the magistrates would have a personal knowledge of the persons who were put on the list. With that view, I would give the magistrates power to investigate the matter, or to exercise their judgment as to whether certain persons should be returned on the list. For instance, there is a very large class in Tipperary, I am sorry to say, and I am afraid in other counties also, of persons who are constantly and habitually drunk. I would not permit those persons to be on juries. I would not allow a man who was perpetually before the magistrates for assault to be put upon the jurors' list. It is not very easy to establish those cases, possibly, before the county judge; but if the revision took place, as I submit it ought, at the petty sessions by the magistrates, I would give the local resident magistrates a discretion to exclude, independently of the persons who are unable to read and write, and idiots and lunatics, and so on, persons who, in the discretion of the magistrates, ought not to sit upon juries.

2521. Would you be in favour of reverting to the old practice?
I would not. I do not know that this has been suggested before, but I think it is worthy of consideration. If there was any legal question to be decided by the county judge, it would seem to be reasonable to have the revision before him; but the revision is a mere formal thing; the names are called out, and no legal question is ever started. It would, it occurs to me, be an advantage, if, at petty sessions, the names were furnished by the poor rate collectors, and submitted

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mitted to the magistrates; and they would have an opportunity, without assigning reasons, but exercising their judgment, of excluding a man who had been two or three times up before them for drunkenness or for assault.

2522. Lord *Emly.*] Do you mean that the magistrates should have the power of excluding arbitrarily whom they pleased, or would you rather have some statutory ground of exclusion?

I would not like to have statutory grounds of exclusion, nor should it be entirely an arbitrary thing.

2523. But can there be a *tertium quid;* must not the exclusion be either arbitrary or on some statutory grounds?

It would be arbitrary in one sense. By a late Act of 1876 persons licensed to sell intoxicating liquors to be retailed upon the premises are disqualified, and properly so, I think; I would add to that all persons who had been fined for drunkenness during the current year.

2524. Lord *Tyrone.*] On one conviction?

Say, supposing he had been convicted twice. However, I think that a person who is fined for assault twice should be disqualified.

2525. Lord *Emly.*] That would be a statutory ground?

It would; but I would go farther than that again, and say that it ought to be left very much to the discretion of the magistrates who knew the locality.

2526. *Chairman.*] Would you put the magistrates in the position of saying of a certain individual that he has the full legal qualification for service on the jury, but that, for no particular reason, unless it be the suspicion of the magistrate, he shall be prevented from taking his share of service?

It would come to that, and that is like what the sheriff used to do before. I do not see how that could be got over

2527. Is there any other suggestion that you would make?

I would suggest that the oath of the jurors should be changed. It is a very antiquated oath, and, in my opinion, it is not at all understood by the people who take it. As I think I have already stated, a great number of jurors go into the box fancying that they can do anything according to their feelings or impressions. The form of oath which they now take is that they shall "a true verdict give according to the evidence." Now the meaning of "evidence," I think, they are utterly ignorant of. I would suggest that these words should be added: "Such evidence to be solely defined by the judge." They will not take the judge's opinion, even in matters of law, in my county. Over and over again I have had to address them, and tell them that they were bound to do it, but they will not do it; but if it was brought prominently before them when they took the book into their hands, what the meaning of "evidence" was, which I do not think they understand, I think it would be a great improvement, although I dare say a great many people will be for maintaining the old antiquated form.

2528. You think that jurors, as a rule, are disposed to have respect for the oath as such, but that the particular form of the oath is one which does not convey to them a very clear idea of their duty?

That is my idea. I think that ought to be prominently brought before them.

2529. Lord *Emly.*] Would not that be better accomplished by leaving out the first part, "You shall well and truly try, and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar," which would probably be rather Hebrew to some of the jurors, and by having the oath simply, "You shall give a true verdict according to the evidence"?

"According to the evidence as defined by the judge."

2530. But if you put "as defined by the judge," you surely do not mean to say that if the judge had omitted (which would be possible or probable) some important part of the evidence, the jurors were not to take that into account in giving their verdict?

They must be bound by what the judge tells them.

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2531. But if they have heard some witness make a statement which appears to them to be of great importance, and the judge makes no reference to that statement, you surely would not exclude from the consideration of the jurors that portion of the evidence, would you?

Very frequently the judge does not go through all the evidence, in detail, but he asks them to recollect the facts; and I think that that is often the best way. I do not think they comprehend the meaning of the word "evidence," and they consider that they are at liberty to act upon any statement made by the prisoner's counsel or by the counsel for the Crown.

2532. That is why I want you to suggest some form of words which would be intelligible to a juror, and which would bring it to his mind that he is bound in conscience to find a verdict according to the evidence that had been given before him?

The alterations that I have suggested are quite open to further explanation and amplification. I am only starting the suggestion to the Committee, and I think that it is one, perhaps, that might be worthy of consideration. As to the precise form of it, I do not at all pretend to say that this is infallible; on the contrary, what I do say and think is that it is essential to bring before the minds of the men taking the oath what is meant by "evidence," and I am very certain that if they were interrogated they would not be able to say what it meant. I would also add to that oath that the jurors should be bound to secresy, the same as the grand jury are, so that supposing that the jury disagreed they should not tell; and I think that a jury who do not find a verdict ought to be also bound to secresy.

2532*. *Chairman.*] Do you think that that obligation would be effectually binding upon men of the class who are in the jury-box?

Your Lordship can form a better opinion as to that than I can, but I put it before you at all events.

2533. Viscount *Hutchinson.*] When the grand jury finds bills, is the room cleared for their decision?

Yes, and they are sworn to secresy: "You and your fellow jurors shall not disclose," and so on; it is a long oath.

2534. *Chairman.*] Have you any other suggestion to make?

There are two panels prepared by the sheriff, one contains the number to be called on the grand jury; those are taken from what is called the special jurors' book, with an additional qualification; I think it is 150*l.*; and in my county they number about 300. When 23 of that number answer to their names, the rest are discharged. There are generally upon that panel 40 names, and perhaps more. I propose that, after that panel is exhausted, and the 23 names are sworn on the grand jury, the other 17, or whatever number might remain, should assist the common jury in the investigation of the cases before them. The effect of this would be to infuse a better class of people amongst the petty jury.

2535. When you say that those 17 should assist the common jury, do you mean that their names should be balloted for with the common jurors?

Precisely so. A great many people hold (but I am not one of them) that grand juries at quarter sessions should be done away with altogether, and that, in fact, there should be no distinction between them and the common jurors. I think it is just as well to leave the grand jury to stand as it is now. But when the panel is exhausted, as I have mentioned, I think they should be balloted for with the common jurors, and take their part on the petty jury. I think they would not consider that a degradation, and I think it would secure a very good attendance.

2536. How would it secure a good attendance?

I think they would come in. Very often we have only a small grand jury; only 13, or 14, or 15, and they would be all too anxious to be amongst the 23, fearing they would be sent down to the petty jury. We have not frequently short juries.

2537. Lord

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2537. Lord *Monck.*] What function does the grand jury at quarter sessions discharge now?

Bills are prepared by the clerk of the peace, and the witnesses' names are on the back of the bills, and they are called in. There is no one allowed to be in the grand jury room, except the grand jury and the witnesses.

2538. Do you think that any serious inconvenience to the administration of justice would be produced by abolishing grand juries at quarter sessions, having the Attorney General, or some representative of his, giving directions what cases shall be prosecuted, and what shall not?

My own opinion would be in favour of leaving things as they are; but I cannot start by saying that any inconvenience would arise, and I know many experienced men say that it would be better to have the grand jury and the common jury formed on one panel, and that you will in that way have a better class of juries.

2539. You have the *élite* of the jurors put on a body which performs a mere mechanical function, and which, in fact, exercises no influence whatever on the administration of justice, and you take them out of the class who are to administer justice; do you not think that that is a great waste of power, to say the least of it?

There is a great deal, I know, to be said on both sides; but I am meeting it to some extent. If the panel is 40, and 23 answer, there are 17 of the good class that go to the common jury. You must respect the feelings of some people, and, of course, the grand jurors are a little proud of their position as grand jurors, and they do not want to be put among the petty jury, and that is one of the reasons why I would say, leave it as it is.

2540. *Chairman.*] Have you any other suggestion to make?

I would be very much in favour of what is called triple verdicts; that is, a verdict of "guilty," "not proven," or "not guilty."

2541. Viscount *Hutchinson.*] I suppose you would advocate that very much upon the grounds upon which Mr. Gibson advocated it?

Very much. As to the class of jurors, it is the poor rate collector who first prepares the list of jurors, and that is afterwards submitted to the clerk of the union, and then to the clerk of the peace, and finally to the county court judge; but it is the duty of the poor rate collector to mark in the margin whether a man can read or write, or whether he is over 65 years of age, or any other ground of exemption; but in an investigation at Clonmel not long ago, the poor rate collector told me that there was a neighbour of his who he thought was over 65, and that he ought to strike him off. He called upon the man, knowing him very intimately, and said to him, "I think I ought to strike you off; you are over 65." "Oh, thank you," he said, "I am very much obliged to you." But before the poor rate collector was up on the following morning, this man called on him, and he said to him: "I have been thinking of what you said to me; leave me on; a poor fellow might get into trouble, and I might like to help him."

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Friday next, at Twelve o'clock.

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Die Veneris, 8° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Tyrone.
Lord Privy Seal.	Lord Silchester.
Marquess of Lansdowne.	Lord Monck.
Earl of Derby.	Lord Penzance.
Viscount Hutchinson.	Lord Ardilaun.

MARQUESS OF LANSDOWNE, in the Chair.

Mr. BENJAMIN WHITNEY, is called in; and Examined, as follows:

2542. *Chairman.*] I believe you are Clerk of the Crown for the county of Mayo?
I am Clerk of the Peace and Clerk of the Crown for Mayo.

2543. How long have you held those offices?
I have been Clerk of the Crown since 1867, and Clerk of the Peace since 1878.

2544. Your official duties give you opportunities of observing the conduct of juries?
Certainly.

2545. Will you give the Committee your impressions generally with regard to the effect of the legislation of 1871; in which year the Act commonly called "Lord O'Hagan's Act" was passed?
Yes.

2546. I suppose we may take it that the Act was intended in the first place to substitute a rating qualification for the old freehold and leasehold qualification?
Yes.

2547. Was that a change which commends itself to your judgment?
Yes, because it took the means of selection out of the hands of the sheriff. The jury now are impannelled by rule and not by selection.

2548. And in your opinion that was a desirable change?
Yes, provided the qualification is sufficient.

2549. Is it sufficient in your county?
I think not in my county.

2550. Will you distinguish, if you please, in your answers, between civil cases and criminal cases?
Yes.

2551. I understand from you that you think the present rating qualification is not a satisfactory one?
It is not satisfactory in towns. Our qualification for towns in Mayo is but 6*l.* That is under the 39 & 40 Vict.

2552. Lord *Penzance.*] That is under the Act of 1871, is it not?
No, the amended Act, the 39 & 40 Vict. c. 21.

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2553. The Act of 1876, you mean?
Yes.

2554. Did that Act reduce the qualification?
It reduced the qualification in towns in Mayo to 6 *l.*

2555. From what amount?
From 10 *l.*

2556. *Chairman.*] And, in your opinion, that reduction was unadvisable, as I understand?
I think so.

2557. Do you think the 40 *l.* qualification is sufficient?
I do. I think the 40 *l.* qualification is sufficient in rural districts in Mayo.

2558. If you were to go any higher should you be able to get a sufficient number of jurors?
No, not in Mayo. On our jury list for the current year we have but 616 general jurors; from those I select special jurors, having the necessary qualification, 171; and that leaves but 445 working jurors.

2559. Have you any observation to make with regard to the class from which the jurors are generally drawn; do they belong to any particular class?
They belong to the farming class almost exclusively in Mayo.

2560. Have you any figures that you can give us?
Yes, I can give you a tabulated statement showing the number of each qualification. We have on the current juror's book 27 who are rated at 6 *l.*; the number rated between 6 *l.* and 10 *l.* is 107; between 10 *l.* and 20 *l.* the number is 65; between 20 *l.* and 30 *l.* it is 52; between 30 *l.* and 50 *l.*, 74; over 50 *l.*, 261; and the leasehold and freehold qualification, 30; that makes the aggregate of 616.

2561. May I infer from what you have said with regard to the rating qualification in towns, that you would be disposed to get rid of those jurors who are rated below 10 *l.*
Below 6 *l.*; our town rating in Mayo now is 6 *l.*, and it is entirely too low; it should certainly not be less than 10 *l.*

2562. Then if it were raised to 10 *l.* the effect would be to take out of the list which you have just given, the 27 who are rated at 6 *l.*, and the 107 who are below 10 *l.*?
It would.

2563. That would involve a considerable numerical reduction in the jurors' list?
I think not very much.

2564. Do you not think it would involve a sufficient reduction to make the burden of service too heavy on the remainder?
No, I think not.

2565. Lord *Penzance.*] That would reduce your 445 working common jurors by 134, leaving the number at 311, that is taking out the 27 at 6 *l.* and the 107 at 6 *l.* to 10 *l.*; you say you would strike those out?
To meet any such contingency as that the rural jurors in Mayo might safely be reduced to 30 *l.* rating. At present, whatever jurors we have, the number is largely broken in upon by the want of care of clerks of unions and poor rate collectors. They return year after year men who are struck off the list owing to their being over age, or suffering from deafness, or some such infirmity; we have the same thing going on year after year.

2566. *Chairman.*] Several witnesses have suggested to us that a more frequent revision of the lists would be advisable; is that your opinion?
I do not think so, because the list is revised, as you are aware, once a year; but notwithstanding the revision once a year, those individuals who have been struck off at the previous revision sessions are returned the next year all the same.

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same. What is desirable is that some stringent measure should be adopted to make the clerk of the unions furnish the proper returns.

2567. Have you any definite idea as to what those stringent measures might be?
I could not answer that question off hand.

2568. Your answer points to greater diligence on the part of officials who are now wanting in that diligence?
Certainly.

2569. Will you state to the Committee your impression with regard to the manner in which the juries, constituted as you have described, do their duty?
Just at present it is not easy to get verdicts from juries; but that I think would be got rid of by the introduction of, say one-third, special jurors.

2570. We will come to the suggestions presently; you say that just at present it is not easy to get verdicts?
That is in questions arising in connection with agrarian crime; in any case connected with land there is a great probability of there being a disagreement.

2571. With that exception are you prepared to say that their conduct is satisfactory?
The juries in Mayo work fairly satisfactorily except in that instance.

2572. And should you say that, previously to the recent excitement which has passed over the surface of the country, the conduct of the jurors was open to this observation or not?
I do not think it was.

2573. In ordinary cases, cases of larceny, for instance, should you expect the jury to have regard to its oath and find a proper verdict?
Unquestionably.

2574. Is this limited failure of the juries due, in your opinion, to intimidation or to sympathy with the criminal?
There has been an amount of influence brought to bear upon juries that may have prevented them from discharging their duty as they should have discharged it.

2575. Would that be influence brought to bear by persuasion or by threats?
It is not persuasion, I should think.

2576. Then your evidence on this part of the question comes to this, that in ordinary times and as far as ordinary cases are concerned, you are satisfied with your Mayo juries, but that during the present somewhat abnormal condition of things, and in regard to the particular class of cases which you have specified, you are not able to depend upon their discharging their duty properly?
No.

2577. You were on the point just now (I think I interrupted you) of making a suggestion for the improvement of the present system?
Yes, I think if the jury was composed of two-thirds from the common jurors' panel, and one-third from the special panel, you would be always assured of a proper verdict.

2578. The special jurors' qualification, I think, is 150 *l.*, is it not?
No, not with us; it is 70 *l.*; the various counties differ in qualifications under the Act of 1876.

2579. What class of men does the 70 *l.* rating qualification give you in Mayo?
They are generally men of property; the small farmer class is excluded from it.

2580. Do you find on the ordinary jurors' list that there are many persons representing the property class; I mean men of a rather better position than the ordinary run of farmers?
Yes;

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Yes; the jurors' list contains the names not only of the men who form the common jury, but also those who form the special jury.

2581. But under the present arrangement, the special jurors and the members of the grand jury, for instance, are not usually to be found on the juries?
Not usually; there is always some excuse; it is invariably so.

2582. Are there not other causes which operate in the direction of keeping the better class of jurors out of the jury box?
No, not that I am aware of.

2583. One recommendation you make is, that the common jury should be composed of one-third special jurors; have you any other recommendation to suggest?
At the present time, in ordinary larceny cases on the criminal side, the prisoner has the right to 20 peremptory challenges, and in misdemeanour cases a right to six. I see no reason why the prisoner should have the right to 20 peremptory challenges.

2584. Why so think that number excessive?
A man for an ordinary misdemeanour has six peremptory challenges; a man for taking 6 *d.* out of your pocket has a right to 20 peremptory challenges, there is very little difference in the nature of the offence.

2585. How does the exercise of that right of challenge operate?
Supposing there are two prisoners to be tried together, it is rather a rare occurrence that they join in their challenges. Then between the Crown's stand-bys and the prisoners' challenges of 40 (which the two prisoners have the right to), it exhausts the list pretty well.

2586. Has it not also this effect, that without exhausting the list, it very often tends to exclude from the jury the more respectable men?
Yes, and the parties that ought to be on the jury. At the quarter sessions the county court judge, you may say, is both judge and jury, except where a railway or some other company is defendant, then the plaintiff invariably serves notice on the sheriff for a jury.

2587. Will you explain that answer; you said the judge was both judge and jury?
That is the county court judge.

2588. Yes?
All the civil cases are heard by the county court judge without a jury, except when, as I have instanced, the parties serve notice on the sheriff for a jury.

2589. Have you any other suggestion that you would like to make?
No.

2590. We have had a good deal of evidence upon a point as to which I should like to know your opinion; that is the change in the venue where the district in which the cases stand for trial is much excited; have you had, personally, any experience of the way in which that works?
No, not personally.

2591. Is it a point to which you have given any attention?
It would be a most desirable thing to effect, because in numberless cases there would be no possibility of getting a verdict, and in a district where neither of the parties were known, they would be sure to have an impartial trial.

2592. Do you consider that the present mode of procedure, in cases where it is thought desirable to apply for a change of venue, is satisfactory?
I think so.

2593. *Lord Privy Seal.*] You said just now that persons of the special juror class had always some excuse in order to avoid serving on the common juries; would you explain that answer a little more fully?

As

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As a rule, they think it beneath their position to attend upon common juries.

2594. They dislike it, and in practice their attendance is not enforced?
Except by a fine of 2 *l.*

2595. Is that fine ever inflicted?
Do you mean is it ever recovered?

2596. Yes?
I am constantly issuing warrants for the recovery of it.

2597. But I suppose from what you say that is not sufficient to secure their attendance?
No; the 2 *l.* fine is considered so small that they prefer paying it.

2598. And that often happens, does it?
Frequently.

2599. So that, even in the present state of the law, if special jurors were willing to serve upon common juries, there would be a certain number of that class in the jury box?
No.

2600. And you wish to find some means of securing their presence there?
Yes, it would be most desirable.

2601. In what way would the presence of that class of jurors in the jury box, or a few of them, secure better verdicts than are now to be obtained?
Because they are men of better education, and, in consequence of that, be better qualified for the sifting of evidence, and arriving at a proper conclusion, and, in consultation with their brother jurors, be sure to show them the desirability of their thought being brought to bear upon the subject.

2602. Considering the causes of disagreement in these cases where, according to the evidence, there ought to be a verdict of guilty, do you think the presence of a few of these gentlemen would secure such a verdict?
In numbers of instances it would.

2603. You do not think it would have the effect of separating the jury, as it were, into two classes?
I do not think so.

2604. Are there any steps whatever taken now in practice to control the clerks of the unions or to secure their performance of their duties in preparing the lists?
There is none. The process is this: each clerk of the peace issues a precept to the clerk of the union, and under that he is bound to make a return on or before the 1st of August in each year, and from that return the jurors' book is made out.

2605. Which is revised?
It is revised at the Revision Sessions in October.

2606. But supposing that a number of errors are found which have been caused by the negligence of the clerk of the union, is anything done?
They are corrected. The county court judge is the revising barrister; his attention is called to errors at the revision sessions, and he corrects the list.

2607. Would any penalty, or can any penalty, be inflicted upon the clerk of the union for negligence?
Not as the law at present stands.

2608. Do you think it would be advisable that there should be some such power of inflicting a penalty?
Undoubtedly.

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2609. I suppose what you call the 6 *l.* qualification in towns is a house qualification?
A house qualification.

2610. Does it apply to a house anywhere?
It is a house qualification pure and simple.

2611. *Lord President.*] But it is not only in towns, is it; it is a house in any part of the country, is it not?
No, the town qualification under the Act is quite a different qualification to that of a rural district.

2612. What is the definition of a town?
The ambit of the country town itself; there are generally townships now.

2613 There must be some definition in the Act as to the population, or whether it is under commissioners, or whatever it is?
Here is the exact definition of it: "An annual value of 40 *l.* or upwards in respect of lands, tenements, or hereditaments within the said county, or a net annual value of 6 *l.* or upwards in respect of a dwelling-house, office, and curtilage appearing on the rate book of any union to be situate within any of the said counties."

2614. Then it is a house anywhere; it applies to any part of the county where tenements of that description are rated in that way?
It has always been held to be a town qualification.

2615. I suppose in a small village they would be rated at that town qualification?
Certainly.

2616. Lord *Penzance*] Or if the house was not in a village, it would still be within a union and it would fall within that definition, would it not?
Yes.

2617. *Lord Privy Seal.*] Suppose it were a house in the country, with nothing but a garden attached to it, rated at that valuation, it would clearly come within those words?
Certainly.

2618. *Lord President.*] You spoke of men who are struck off for deafness, and various persons in one year being put on the list next year; is that the fault of the people who have the duty of making out the list?
It is the fault of the clerk of the union.

2619. They ought not to put them on?
When they are once struck off for such a cause, they ought never to be put on again.

2620. You spoke of the change of venue. I suppose practically there has been a good deal of change of venue by the working of the winter assize?
Yes, the working of the winter assize has caused a change of venue for crime.

2621. Where do the Mayo cases go?
All the winter assizes that have taken place for the Connaught circuit have principally been held in Leitrim; once only, I think, in Galway.

2622. Have you found any advantage in Mayo cases being tried in Leitrim?
Yes, unquestionably.

2623 Are there not the same influences at work in Leitrim as there are in Mayo, as to agrarian crime, and so on?
There was not at the time the winter assizes were being held in Leitrim.

2624. At the present time would there be any difference?
I should say there would be now.

2625. Do

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2625. Do your remarks apply to the present exceptional state of things in Ireland, or generally?
As to the change of venue, those remarks apply to the exceptional times, because Leitrim unquestionably would not be influenced when a normal state of things existed.

2626. I meant your general remarks as to juries not doing their duty in certain cases in Mayo; do those remarks apply to the present time, or to the ordinary time when things have been quiet?
I would apply them to all times.

2627. There has always been a sympathy, or a fear, on the part of the jurors, you think?
It depends upon the nature of the crime; if it arises out of land, sympathy exists.

2628. And that has existed at all times?
That has existed at all times.

2629. Lord *Ardilaun.*] Have you any knowledge of canvassing the jurors to prevent them attending at the time of any particular case?
I could not say that I have knowledge of it, but I have heard of it.

2630. And you believe it exists?
Yes.

2631. In some cases also have you heard of jurors, who might find a proper verdict, being intimidated from attending?
Certainly.

2632. Have you known many miscarriages of justice in agrarian cases, or cases of violence connected with agrarian cases, in Mayo?
Yes

2633. A very large proportion of those have been tried?
I would not say a very large proportion, but a great number, since this present land agitation cropped up.

2634. That, I suppose, you attribute, in the first instance, to not being able to obtain evidence?
It is almost impossible to obtain evidence latterly.

2635. Do you think, if evidence was obtained, it would make much difference?
I do not.

2636. The jurors would find against the evidence, in any case where their sympathy was aroused, you think?
Either that, or they would disagree.

2637. It was suggested to us that the change of venue to Dublin would be a great advantage; are you of opinion that the Dublin jurors are free from intimidation. Before answering that question I would ask you to recall to your mind some recent political and agrarian cases, well known cases that were tried in Dublin?
Do you allude to one case that was tried recently.

2638. Yes?
I could not possibly say whether there was intimidation or not; but I read the accounts in the newspapers very carefully, and in my opinion there was no evidence of intimidation in that case.

2639. I mean before that; you live in Dublin, and have you not heard that some jurors were intimidated on previous occasions?
Yes, I did hear it.

2640. Do you or do you not think that intimidation would be likely to increase, in respect to Dublin jurors, if these cases were very numerously brought to Dublin?

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The class of jurors who would be likely to try the cases would, I scarcely think, be intimidated.

2641. Are there not a good many merchants in Dublin who might be Boycotted in the country?
That is a question of probabilities.

2642. You do not know of any one who has been notoriously Boycotted?
I do, one.

2643. And you do not think he would care to go into the jury box again, if he could help it?
I am sure he would not.

2644. He is a man of large property and means, is he not?
He is.

2645. And the sale of his goods was stopped?
Yes, all through part of the West.

2646. That is the case?
If you allude to the one I have in my mind, it is.

2647. Do you think many cases are sent by the magistrates to the assizes, which they might adjudicate upon themselves?
I think the magistrates' jurisdiction should be extended.

2648. Would you extend the jurisdiction of all the magistrates, or of only the stipendiary magistrates?
I do not think you could draw a line. I would extend the general magisterial jurisdiction. We have a lot of "footy" cases sent for trial at the sessions which the magistrates should themselves have disposed of.

2649. Why do you think they do not dispose of them?
It is too plain at the present time.

2650. Intimidation, you mean?
Yes, certainly; they have to live in isolated districts.

2651. And that intimidation and fear of injury causes them to send the cases to the assizes?
I could not say it is so; it is what I imagine.

2652. Did this occur before the present state of the country came about?
No.

2653. Why do you think the stipendiary magistrates do not decide on these cases without sending them on?
They may not be at the sessions; a magistrate cannot be in two places at once.

2654. Lord *Penzance.*] As I understand you, your first remedy for the existing state of things would be to increase the qualification?
Yes.

2655. You think that at present the men who get in on that low qualification are not competent as jurors?
Yes, frequently that is so; sometimes the foreman of a jury is unable to write his name.

2656. There are many such men, are there, come on the jury?
I have seen some such.

2657. And that would be cured, you think, by raising the qualification above 10*l.*?
It would.

2658. But then there is another cause at work, intimidation, or sympathy; that would, of course, not be effected by raising the qualification to that extent, would it?
No, not for that class of juror.

2659. Then

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2659. Then you say you would infuse more of the special jurors on to the jury panel, if you could?
Yes, that is my opinion.

2660. Just consider for a moment, would that be a cure for any state of things which depended upon intimidation or sympathy?
I do not say that it would be an absolute cure, but it would be a move in the proper direction to get rid of it.

2661. Seeing that a jury must be unanimous, if there was a common juror who was under a state of intimidation, or in a condition of sympathy, he might disagree, might he not?
Under the present jury system, of course, they must be unanimous; but I think the verdict of two-thirds ought to be quite sufficient.

2662. That would also be a part of your suggestion, would it?
Yes, a verdict from two-thirds ought to be quite sufficient.

2663 Then, applying that suggestion to this composite jury, it would require two-thirds to get a verdict?
Yes.

2664. And if the educated classes were not in that number, perhaps the old condition of things would still come about, that you would get no verdict?
I do not think it could.

2665. Suppose the juries consist of eight common and four special jurors, that was your proportion; you said two-thirds common jurors and one-third special jurors?
Yes.

2666. Let us suppose two-thirds, eight common and four special jurors; let them try a case in which the sympathies of common jurors are excited; if the verdict of two-thirds were to decide the matter, would you get a verdict?
No. At the same time I think the better education and better standing, and position of the four will in a great measure cause the others to do what is right.

2667. You think it would overcome their sympathy or intimidation?
Yes.

2668. Let us look at another state of things that might happen. There are, as you say, 20 peremptory challenges?
Yes; that is what I have suggested should be decreased.

2669. Just allow me to suggest this to you: each man has 20 peremptory challenges?
Yes.

2670. If two prisoners are tried together, that would be 40 peremptory challenges?
Yes.

2671. Supposing your jury list were composed more largely, as you suggest, of special jurors, still these challenges, if acted upon, would sweep them all out of the jury box, would it not?
It could not take them all, I think.

2672. Pretty nearly all?
It will take a good number of them; but you will be sure to have somebody upon it to sway them.

2673. How many are the special jurors?
We have 171.

2674. Of that 171 there would not be a third, probably, attending any trial, would there?
There would be some of them attending on the grand jury.

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2675. And a good many?
Some of them, not all; perhaps there might be six or seven of them.

2676. Then your jury panel would have to be made out, and would not include a very large proportion of the 171, if taken alphabetically, with the common jurors, would it?
It would take some; there might be about six or eight of those upon the grand jury.

2677. How many would there be on the jury panel when the jury was called?
Our jury panel for the assizes is generally about 200 to 300.

2678. Out of that number, perhaps only 40 would be special jurors, would they?
The proportion would be about 10 per cent., I think. My suggestion is that, in any event, a third of the jury should be composed of special jurors, after all challenges.

2679. But to have that, you would probably have to reduce the number of challenges, would you not?
I think 20 challenges in pure larceny cases, for instance, if a fellow steals 6*d.* or 1*s.* out of your pocket, is ridiculous. In a misdemeanour case prisoner has six challenges, and it is quite sufficient, I think; very frequently they do not exercise the right.

2680. You think the distinction between felony and misdemeanour in that respect is not a reasonable one?
No, where the crime is not the subject of a penal servitude sentence, I think the challenge should not extend to more than six.

2681. That is where the sentence does not extend to penal servitude?
Yes.

2682. For all offences punishable with something less than penal servitude, six ought to be enough, you think?
Yes; it ought to be reduced to six.

2683. With regard to making out the list, which seems an important thing, we have been told before, I think, that the officers are very lax in the way they make out the list; you have told us to-day that they actually put down on the new list names that have been struck off at the revision?
Yes; nearly every year the same thing occurs.

2684. That is pure negligence on the part of the clerk of the union, you would say?
It can only be that.

2685. Would you think it a reasonable provision to make, that the judge who revises the list should have the power to fine the clerk of the union, or to deduct something from the payment coming to him, in respect of those omissions; would you enforce more care in making out the lists, by giving some power to the judge who revises the list, to fine the officer who had made the blunder or been guilty of negligence?
It is rather an invidious duty to cast upon the judge, to parcel out how much each clerk of the union is to pay.

2686. Suppose the fine were fixed for every blunder, or mere negligence that he made?
If it was mandatory you would get very few clerks of the union to take the situation, I think; the salary might be swallowed up in fines.

2687. That is to say, if the clerk of the union conducted his business so negligently as to produce all this trouble, he would get no salary?
It would amount to that.

2688. That is the objection you see to fining him?
Yes; I think there should be some statutory means devised, without causing him to be fined.

2689. How

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2689. How can you by any means make a man do his duty, except by punishing him if he does not do it?

I could not without thought point out the means.

2690. Lord *Ardilaun.*] How is it that the revising barrister that looks over the lists does not discover these mistakes?

The list is made out and returned by the clerk of the union to him, and the revising barrister has nothing to do except to attend to the objections at the revision sessions. If there are no objections made to the lists, of course they are assumed to be right.

2691. Lord *Penzance.*] The revising judge has no knowledge of the matter of his own?

None whatever.

2692. He has to have the objection brought before him?

If the objection is brougbt before him, where a man that has been struck off at the previous sessions attends before the county court judge, and informs bim that he has been struck off, we refer to the previous jurors' book, and see that it is so; or the man is sworn to the fact; and then he is immediately struck off.

2693. But the revising judge can do nothing of bimself, because he bas no knowledge of the matter?

No, you could not expect him to recollect 400 or 500 or 600 or 700 names.

2694. With regard to the magistrates' jurisdiction, you seem to be in favour of extending that jurisdiction?

Yes, extending it to small larceny cases that we have sent to the sessions to be tried by a jury, which the magistrates could dispose of quite easily.

2695. Are there any other cases connected with those agrarian tumults that might be disposed of by the magistrates?

I could not enumerate the number of cases that a magistrate might dispose of at petty sessions.

2696. Common assaults?

We have common assaults and larceny cases, and all those classes of crimes sent on to the sessions, that might have been quite easily disposed of by the magistrates.

2697. You would extend the existing jurisdiction of the magistrates, would you?

Certainly.

2698. Besides that, would you make it imperative to try these cases by the magistrates?

I would; otherwise they would be coming on at the sessions again, unless it is mandatory to do so. At certain periods the magistrates will rather not embark upon that jurisdiction if they can avoid it.

2699. You want two things, in fact: the extension of the jurisdiction, and the making of it an exclusive jurisdiction?

Certainly.

2700. Earl of *Derby.*] Do I gather from your evidence that there is a general failure of justice in cases of assault, not connected with agrarian offences?

No, not at all, generally.

1701. On the whole, in regard to such cases, the juries act fairly; is that your opinion?

Yes, as a general rule. In some cases there are influences, I have no doubt, brought to bear on juries to prevent them doing what is right?

2702. Do you tbink that there is often influence brought to bear upon a jury by the personal friends of the prisoner, independently of any sympathy that might be felt for the act with which he is charged?

I think there is sometimes, but they are isolated cases.

2703. Then, I presume, in such cases, a change of venue would be a tolerably effective remedy?

Certainly.

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2704. But it would not be a remedy where the sympathy felt was not so much with the individual as with the act with which he is charged?
It is only an isolated local influence. If there are some jurors from the local place, they will no doubt endeavour to bring influence to bear upon the jury to get a disagreement.

2705. You said that you would take a verdict of a majority of two-thirds?
Yes.

2706. Would not that in some cases lead to even greater failures of justice than at present. I will put it in this way. At present if there are one or two dissentient jurors, and there is a disagreement, and no verdict is returned, the man may be tried again; but if the verdict of a majority were taken, would it not be in many cases a verdict of acquittal, whereas at present it is a disagreement?
Not, I think, if my suggestion making it imperative having special jurors on the panel was adopted.

2707. You think that the influence of the more educated classes would be felt on the jury?
I do; I think that the influence of the educated class, mixed with the common jury, would effect that object.

2708. Do you think that there would be a strong prejudice on the part of the more educated classes against serving on common juries?
There would be, and there is, unquestionably.

2709. Apart from the dislike to the duties and the trouble, there is a dislike to mix with the poorer and less educated class; is not that so?
They do not wish to serve with the common jurors, if they can avoid it.

2710. *Chairman.*] Just let me ask you one question with regard to the jurisdiction of the local magistrates; you have, I suppose, opportunities of judging of more than one bench?
Only in my own county.

2711. Do you observe much diversity in their conduct with regard to sending cases for trial?
No, except in one district, in Mayo, they are nearly all the same. Mr. Moroney, the resident magistrate at Belmullet, tries nearly all the cases himself; we rarely have a case sent on by him.

2712. He tries the cases himself, you say?
Yes, nearly all.

2713. Has the effect of that been salutary?
We have, practically, no crime to try from the Barony of Erris, over which he is resident magistrate.

2714. Therefore, in this gentleman's district these offences are punished?
Certainly; perhaps not very severely, but always with great promptitude.

2715. *Lord President.*] Is not that practically carried out by the other resident magistrates in Mayo?
No, it is only in that district that he tries them all himself.

2716. Do not any of the other magistrates try the cases themselves rather than send them on?
Not to the same extent.

2717. *Lord Privy Seal.*] I suppose the resident magistrate does not attend all the petty sessions in the county?
Each resident magistrate has his own district.

2718. But, I suppose, petty sessions are constantly held without the presence of any resident magistrate?

Constantly;

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Constantly; they have had such onerous duties cast upon them latterly that they could not possibly attend.

2719. *Lord President.*] The petty sessions courts are held rather with a view to enabling the resident magistrate to go to all the courts in his district, are they not?
They are.

2720. Lord *Silchester.*] Erris is a remote barony, is it not; a good way from Castlebar?
Forty or forty-two miles.

2721. Lord *Ardilaun.*] Do you think that there is a large bench, as a rule, at these petty sessions, or that this gentleman sits generally by himself?
He sits almost entirely by himself, or did so until recently. Lord Lucan appointed Mr. Carter recently; but up to then he, practically, sat by himself.

2722. Erris is rather a disturbed district, is it not?
No, not towards Belmullet at all.

2723. Was not that the district in which Mr. Smith was concerned?
No, that is the Ballycroy district.

2724. *Lord President.*] Are there many resident gentry who are justices of the peace in that district?
No, there are very few resident gentry in the locality; Lord Lucan made one gentleman a magistrate recently.

2725. *Lord Privy Seal.*] But still the jurisdiction of a single magistrate at petty sessions is very limited, is it not?
It is.

2726. *Chairman.*] The resident magistrate can deal with cases sitting alone, which the local bench could not deal with, is not that so?
Yes.

2727. He can dispose of cases which a single magistrate could not deal with at all?
Yes, he has larger powers.

2728. Have you observed that in other districts within your knowledge the local magistrates are averse to attending petty sessions?
Yes, latterly.

2729. From what cause, do you suppose?
The land agitation.

2730. Are they generally men of good position in the county?
Yes, certainly.

2731. *Lord President.*] Of what class generally are the petty sessional clerks drawn from?
In some instances they are the younger sons of some of the country gentlemen; and in other cases they are of the national school teacher class.

2732. Are none of them solicitors?
No.

2733. They have no legal training?
No, I have never known a solicitor engaged as a petty sessional clerk.

2734. Would there be sufficient solicitors in the country to act as clerks to all the petty sessions?
I do not think that the pay would induce any solicitor to act.

2735. Do you know what the remuneration is, about?
About 120 *l.* a year in Mayo.

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2736. Lord *Silchester.*] Is not that very high in relation to other counties? I only speak of Mayo.

2737. Lord *Penzance.*] Are they paid by fees?
They are paid partly by small fees, and partly by salary.

2738. *Lord President.*] Out of the fees for dog licenses, for instance?
A per-centage on the dog license, I think, forms part of their salary.

2739. Lord *Penzance.*] What is the salary itself, independently of the fees?
I could not say.

2740. *Lord Privy Seal.*] Are the clerks of petty sessions generally able to give much assistance to the magistrates in the discharge of their duties?
If you mean as to their familiarity with the Acts, under which the magistrates are acting, they have that at their fingers' ends, as a rule.

The Witness is directed to withdraw.

MR. FREDERICK WILLIAM M'BLAINE, is called in; and Examined, as follows:

2741. *Chairman.*] I BELIEVE you have recently held the office of Crown Prosecutor?
Yes.

2742. In the counties of Louth and Down?
In the counties of Louth and Down; and I may say that I was extra-prosecutor; that is what is called a supernumerary, in the other counties on the north-east circuit, to which I have been attached, I suppose, now for a generation of men. I was senior Crown prosecutor in the county of Louth, I think, for about 12 years; then I was second or junior prosecutor in the county of Down, I think, for about 16 years.

2743. And you have watched the operation of the jury laws both before and since the recent changes?
Yes, quite so.

2744. As far as the main principles of those changes go, do they commend themselves to your judgment?
Thoroughly.

2745. And are you inclined to say that the present rating qualification is a sufficient one?
I should confine my answer very much to my own circuit; but, in my opinion, I think it is a perfectly fair and reasonable basis; that is the present arrangement. I think it is perfectly fair, and, in my opinion, it has worked with satisfaction to the Bench and the Bar, and the community generally on the north-east circuit. I am speaking generally. I do not mean to say that there have not been failures occasionally from the infirmity or perjuries of jurors, but I think, as a rule, the system in operation has worked extremely well.

2746. Are there any marked exceptions in the good conduct you have just attributed to the jurors; do you believe that in any particular class of cases the juries do not do their duties in the creditable way you have just described?
I do not point to any particular class. You cannot shut your eyes to this, that if there is any excitement in any particular county, arising out of some agitation or other, jurors will be influenced more or less by their feelings and their prejudices in such cases; but I think it is very little more than what would attach to jurors in this country, labouring under any excitement.

2747 Have the counties, in which your own experience lies, been subject to any disturbing influences of this kind?

Take

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Take the county of Down, and the adjoining county of Armagh; we have had very great excitement there, and disturbances arising out of processions; sometimes what are called Orange processions, and again processions that may be considered anti-Orange, or of the Roman Catholic body. I have been present conducting in many cases as Crown prosecutor, prosecutions against both parties, and I cannot say that I was dissatisfied on the whole with the result of those prosecutions. I think the jurors discharged their duty, under such circumstances, almost as well as any men can be expected to do, having regard to the infirmities of human nature.

2748. Have you had the conduct of prosecutions in any distinctly agrarian cases?
No, I think not; we have had no agrarian cases in Down.

2749. Your experience does not extend to such cases?
I cannot say that it does.

2750. *Lord Privy Seal.*] Have you not had any in Louth?
I really think not; I am just trying to recollect.

2751. *Lord President.*] Cavan is not on your circuit, is it?
Cavan is on the north-west circuit.

2752. *Chairman.*] Then we may take it that, speaking generally, you admit that the juries are liable to occasional infirmity, but that on the whole, so far as your own experience takes you, you have no reason to be otherwise than satisfied with the way in which they have performed their duties?
I think that is so; I think I may be taken as committing myself to that.

2753. Then it would follow that the system being so satisfactory, it does not stand in need of very much alteration; but I am sure the Committee would be glad to hear whether you have any proposals to make for improving what is already so good?
I honestly answer that I am satisfied with the existing state of things, and I do not see that any advantage can be obtained by altering the system. I think it has worked well enough, and that in the end, as jurors become more experienced and more trained, it will be found to be as satisfactory as any system devised by human ingenuity can be.

2754. *Lord President.*] I suppose in different times there is considerable excitement about these party processions, Orange and Green, in your district?
Certainly; I remember a prosecution of a gentleman, who was afterwards a Member of Parliament for Belfast. The trial took place at the Down assizes, and the jury gave a perfectly honest verdict in an extreme party case. It was a case of an Orange procession, where a gentleman of very good position was charged with a breach of the Party Procession Act, and I believe, speaking from recollection, three-fourths of the jury belonged to the same party.

2755. That was before the present Act was in force, was it not?
Yes.

2756. That was in 1868, I think?
Yes.

2757. Besides those there have been riots of a religious character in Lurgan and other places, and trials in consequence?
There have been trials, and the juries did their duty with remarkable fidelity and intelligence.

2758. *Lord Privy Seal.*] Have you found that the jurors who were brought in under the new qualification, since 1871, have learnt by experience, and have improved since your first knowledge of them?
I think so. I must admit that after the passing of the Act of 1871, there was a good deal of ridicule attached, and not unnaturally so, to many jurors appearing in the jury box. They appeared to be so thoroughly unacquainted and inexperienced with even the most ordinary description of a juror's

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duty, that there was a good deal of laughter about it; but, although that was so, I cannot recollect that there was any failure of justice in the shape of bad verdicts in consequence of that Act; for I think it generally happened that there would be a leaven of intelligence on the jury, and the inexperienced men went with those who had the experience and training of jurors; and with that assistance, and with that of course which the presiding judge found it necessary to give them, I think there was no substantial failure of justice even in those cases. But I think the jurors are being gradually trained to a knowledge of their duties; they are intelligent enough as a rule; and an untrained man, when once he has served on a jury, will talk to his neighbours; they will take an interest in the matter, and in that way they will know from him what they will have to do when called upon themselves; and gradually, with the spirit of education in the country, I think the present system, while it gives satisfaction as to fairness to the general mind of the community, will also act fairly in the administration of justice.

2759. To what social class or classes do you find that the jurors generally belong in your circuit; is there much variety among the jurors in that respect?

There is a great deal of variety; there is a good deal of the commercial, manufacturing, and agricultural mixture. There is a good deal of that amongst them. I find shop-keepers and small traders and farmers and manufacturers; they are all mixed upon the jury, and I think that has a very beneficial effect.

2760. Juries are not generally composed entirely of one class, say of small farmers?

No, it is not so on the north-east circuit.

2761. How is that in the county of Louth?

In the county of Louth, at Dundalk, I see most excellent jurors. They are composed of shop-keepers in the town with the farmers in the county, and they are mixed up together. I think that works extremely well, and their verdicts, I believe, give satisfaction.

2762. Do you ever find persons possessing special jurors' qualification serving on common juries?

Yes, and I am very glad to see it.

2763. You do find that?

Yes. It is a thing I would like to see as much as possible; that is the joining together of men of different social positions upon the same jury, assisting each other in the administration of justice. I think it has an excellent social effect, besides the beneficial result in a particular case in which the jury may be so composed.

2764. How far do you go along with the evidence on that point that you heard given by the last witness?

I confess that I do not agree that there should be any artificial means taken to secure the attendance of a class called special jurors, so as to make a jury necessarily composed of a certain proportion of special jurors. I am not disposed to go along with that, I would rather take the chance of the special jurors turning up, as they occacionally do in the ordinary course of rotation upon the jury. I do not like to have a line of demarcation drawn on a jury; that is, that a certain proportion of them shall be what may be considered of a favoured or superior order to the rest of the body. I would rather not have any compulsion or any regulation to provide compulsorily that that should be the state of things. I would rather trust to the natural working of the present system, which I think is a fair and reasonable one, and satisfactory, on the whole, to the public mind.

2765. From your evidence apparently the same result is brought about in your circuit by natural causes?

I think so.

2766. So

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2766. So that the need for any artificial provision is not felt in your circuit?
I think that is a perfectly fair observation. I would rather limit my evidence and anything I have said, to my own experience on the north-east circuit, which is, as your Lordships' know, a favoured district.

2767. There is a good deal of difference between Down and Mayo, is there not?
I have no doubt there is. I do not know anything of the county of Mayo myself.

2768. *Chairman.*] I suppose you are not able to give us any idea of the proportion of the farming class to the men representing other professions on your jury lists?
I do not think I can, except in the most general way. I think in the county Monaghan, perhaps, there is a larger proportion of the agricultural and farming class than there is in the other counties on the north-east circuit. Take Armagh and Down and Belfast; there we have a very considerable mixture of commercial and manufacturing men as jurors with the farmers, and altogether the union of them, or the amalgamation of them, works, I think, very well indeed.

2769. What is the voting qualification for house property in those districts?
I think it is 10 *l.* in those counties.

2770. With reference to a point which came under the notice of the Committee the other day, we are told that it sometimes happens under a clause in the Act, the number of which I forget, that cases are tried in the Queen's Bench before a jury struck under the old system?
Yes.

2771. Have you had any experience of cases so tried?
No; but I am aware of such cases. There was the trial recently of Mr. Parnell and others; that was tried by a jury struck under the old system, which is applicable, I think, to misdemeanours.

2772. *Lord President.*] Did your favourable remarks about the jurors of your circuit extend to the Armagh jurors in party cases?
I may say yes. There may have been a few (and I daresay there have been) verdicts that were distinctly the result of strong party influence in Armagh.

2773. Party feeling is very strong there, is it not?
It is; it is the stronghold of party; the two bodies are pretty nearly on an equality there, and the result is sometimes very bad riots in certain districts. But on a review of the whole of my experience on the circuit I cannot attach any very distinct blame to any of the verdicts. There have been cases, no doubt, where the jurors have been influenced; but unless you abolish the jury system altogether, I do not see how you will avoid that. When agitation and excitement spring up, I do not see how you can possibly avoid these miscarriages altogether; but they are really so few that I would not be disposed on that account to alter the general system.

The Witness is directed to withdraw.

Mr. JEREMIAH C. BLAKE, is called in; and Examined, as follows:

2774. *Chairman.*] You are, I believe, Sessional Crown Solicitor for the City of Cork?
Yes.

2775. How long have you held that office?
About 11 years, I think; and I have had 25 years' experience of continuous practice

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practice in the county of Cork, and the city, with respect to juries, both for and against the Crown.

2776. Are you able to make any general statement to us with regard to the results of the changes in the Jury Law, which were introduced in 1871, and afterwards, as you are aware, modified by the Acts of 1876?
I highly approve of the present system.

2777. In so far as it substitutes a rating qualification for the old qualification, do you mean?
The city of Cork is in itself exceptional as to jurors, because the qualification there is from 10 *l.* to 40 *l.* for petty jurors, and 50 *l.* rating for special jurors; and I find the parties rated from 10 *l.* to 40 *l.* quite as good as those rated at 50 *l.*, and in some instances a great deal better. As far as the city of Cork goes, I do not think you could get a more intelligent jury, either petty or special, under the present system, or under the old system; and as far as the county goes, I am very glad to see that a great many of the farming class, who were excluded before, are now brought upon the jury, and mix with men of position, in coming to conclusions.

2778. You say that men of the farming class mix with men of position?
Yes.

2779. Are you speaking now of the common jurors?
I am, and of special jurors. A great many farmers in the country who hold land rated sufficiently high to qualify them for special jurors, are now brought in and mix with country gentlemen and magistrates; and they all sit in the same box.

2780. Confining yourself, for a moment, to common juries, is it your opinion that men of position serve on the common juries?
Yes, I have seen grand jurors in the city of Cork, and petty jurors also; and I have seen petty jurors acting as grand jurors; so that they all get their turn under the present system. Before, it appeared to me to be entirely exclusive and confined to a certain class; and I think the tendency of the present system is to inspire confidence in the administration of justice in the minds of the people.

2781. I understood you to say that you had seen grand jurors serving on the petty juries?
Yes.

2782. But did you say that you had seen petty jurors serving on grand juries?
I speak now of the quarter sessions, and of the city of Cork. I do not speak of the grand jurors of the county of Cork; but grand jurors of the county of Cork do serve as ordinary jurors, the same as any other, now.

2783. And there is no disinclination on the part of those persons of superior position to take their turn of service with persons of a humbler state?
I never saw it.

2784. In short, you have in your Cork jurors that admixture of classes, which was described by the last witness in your presence?
To the fullest extent we have it there.

2785. We should like to know how the juries thus composed discharge their duties?
I think, in every instance, the juries, both in the county and city of Cork, have acted fairly and given good verdicts, save where a question, like the present one which is now floating over the country, has arisen, which always does create in the minds of the classes who are affected by it a certain prejudice in favour of the party charged, or of the crime, whatever it may be. There is no doubt about that.

2786. Have you yourself known cases where there has been a miscarriage of justice through these causes?
I cannot say that I have. I have known such a case; at the last assizes one of

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of those cases occurred. It was one of the most important cases tried. A man in Mill-street charged a lot of people with Boycotting him and threatening him. The case was tried before Judge Barry, and the jury unhesitatingly brought in a verdict of guilty, the jury being drawn from the same class as the prisoner, and I think the punishment inflicted was twelve months, or two years, it was something very severe. At the same assizes there have been disagreements, as there will be to the end of time.

2787. Lord *Ardilaun.*] Was that a case of a shopkeeper?
Yes.

2788. *Chairman.*] Have you known a considerable number of cases of disagreement?
I cannot say a considerable number; there have been cases; but in ordinary cases of crime, such as homicide, violation of the person, common assaults, larcenies, or anything of that kind, I do not know a case as to which I could say there has been a failure of justice.

2789. I wish to confine my question to the particular class of cases which are touched by that epidemic of excitement which you were referring to just now; have you known yourself cases where the jury, having sufficient evidence, or apparently sufficient evidence, have either acquitted the accused, or disagreed, presumably from pressure, or undue sympathy with the accused?
I can only give you my own opinion about the matter.

2790. Certainly?
I have heard a great deal of conversation as to the findings of juries; but I must say, in my own experience, there is not a verdict that has been given recently that I could quarrel with.

2791. Lord *Penzance.*] Do you say the same as to disagreement?
There have been cases of disagreement, and cases where there may or may not have been a conviction; but there is no case that I can remember. I have prosecuted in some of them myself, and I think they were all fair questions for a jury to decide; and, no matter whether in civil or criminal cases, you will always have jurors who will hold their own opinions, and act upon them, and you find them doing so very often in direct opposition to the judge, and going against the judge's charge.

2792. *Lord Privy Seal.*] Are you speaking of city juries?
Juries of the city and the county.

2793. Are you speaking equally of both?
It applies equally to both, so far as I can see.

2794. *Chairman.*] May we take it from you that, supposing in one of the prosecutions which might be entrusted to you, you had a strong case and plenty of evidence, you would go into court with a reasonable anticipation that the jury would find a proper verdict?
Certainly. Since I have occupied the position of Sessional Crown Solicitor, I never gave the stand by to a juror in my life but once, and that was to a man whom I knew to be a continual drunkard, and a person whom I thought would be an objectionable person on the jury, and I have never had cause to regret it from that day to the present. I never exercised the power of the Crown of giving the stand-by in cases of local riot, or anything else, and have always had good verdicts.

2795. That is to say, having, as I believe you have, an unlimited power of ordering jurors to stand by, you have been so satisfied with the conduct of the jury that you have not exercised that power?
I have never exercised it in my own court; that is the City Court, but acting as I had been directed to do specially by the Attorney General, in some recent cases which occurred in the south, there were some jurors ordered to stand by; but that was done by the Crown Solicitor and not by me. I was assisting the Crown Solicitor, by the special direction of the Attorney General.

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2796. Lord *Ardilaun.*] Did you exercise the right of challenge when you were against the Crown?

When I was against the Crown I very frequently challenged when I had the right, and was always pretty certain of the class of men I would challenge in any particular case; but as to challenging the city of Cork jurors, it is the exception. I may say it is never done; the right is never exercised there.

2797. *Chairman.*] Are you now speaking of the right of challenge by the accused?

Yes, it is very seldom exercised; it is generally the exception in the city of Cork. I do not think I have ever known it to be exercised during my experience except once, in the Recorder's Court, and that was by a gentleman who had no knowledge of the court or the jurors, and who came in from the county, and had no practice whatever in the city. That is the only case in my experience, I think, in which I have ever known a challenge during the entire time I have been there.

2798. Then we understand from you that both sides are so well satisfied with the integrity of the jurors that they do not avail themselves, or avail themselves to a very slight extent, of their power of challenging a particular juror?

That is so in ordinary cases. And as to pressure on jurors, as to which I heard something stated here, I am very glad to say that in my part of the country it does not apply. I have heard some persons saying such and such a person will be favourable. That will apply to civil as well as criminal cases; but the county of Cork is of such large extent that it is out of the question to suppose that any man can rely upon a particular juror, to try and exercise any particular influence. And as to the city of Cork, I am positively certain that no such thing exists.

2799. Your remarks apply in the main to ordinary cases?

Ordinary cases and other cases too. I am not at all dissatisfied with the verdicts given in cases arising out of this land agitation, although I prosecuted myself in some of them, and got them returned for trial. I do not quarrel with them; I think they were fair questions to be submitted to a jury, and they took their view of them.

2800. And you are not prepared to say that that view was an obviously unfair one?

Certainly not. There was a case in which I prosecuted; that is the case of a gentleman who is now a Member of the House of Commons; the case was returned for trial at the winter assizes, and the jury who tried him were, I suppose, 12 of the most intelligent men of the city of Cork, and men who could not be influenced one way or the other by this agitation, with which they have no sympathy whatever, and they acquitted him, I think fairly, on the evidence.

2801. Did your answer as to the very satisfactory admixture of classes to be found in the jury box apply to the city juries only, or to county juries as well?

To both.

2802. To how much of the county of Cork does your experience extend?

At the assizes, the whole county; and very frequently, when I was practising at the sessions, I used to go to all the various quarter sessions courts defending prisoners. Then, of course, any experience I have had in civil cases always included the whole county.

2803. Are you disposed to make any suggestions to the Committee for modification of the present law?

None whatever, because I consider they are very satisfactory, with this exception, that in the city of Cork we very frequently find a number of jurors who are returned alphabetically by the sheriff belonging to the same family or firm; you will find in some large families, who had large businesses, four, five, or six brothers in the same firm, and they are all summoned together, owing to the letters B., C., and D. all coming together. Then the judge interferes, and tries

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tries to let some of them go away, but they must he there until excused, and they have found it a very great inconvenience. That is the only part of the working of the Act that I can see which in any way could be rectified, at least so far as the city of Cork goes.

2804. Lord *Penzance*] Does that apply to the city and the county?

I do not know about the county so much; because there are not so many persons with large businesses there, such as factors, brewers, ironmongers, or persons of that class. But there are a good many brothers all of the same name and firm in the city of Cork, and they find it very inconvenient sometimes. If that could be remedied in any way, I think the jury laws, so far as I see the working of them, are very good.

2805. *Chairman.*] You heard some suggestions made just now pointing in the direction of an increase in the summary jurisdiction of the local magistrates; have you any opinion to express on that point?

There is a great deal to be said for and against that; I have had great experience of local magistrates' courts in the country. In the city of Cork I would not hesitate to give unlimited powers; the magistrates there are free from anything like sympathy or solicitation. But in isolated parts of the country I have known very many cases indeed where the magistrates have been solicited, and have been influenced to a considerable extent, in the administration of justice.

2806. Lord *Penzance.*] In favour or against, do you mean?

That will altogether depend upon the party who solicited, whether it was for or against.

2807. Both ways?

Both ways. I have known it in very many cases, and with very great regret have seen it.

2808. *Chairman.*] The local magistrates of some benches are not men, in your opinion, of sufficient independence of mind to be trusted with much enlarged jurisdiction?

I do not say that exactly, for this reason, I think they have sufficient independence of mind, if they wish to exercise it; but they do not exercise it, in consequence of the people who come around them, and there are so many indirect influences brought to bear upon them that they sympathise one way or the other, or go one way or the other. When I speak of that, I do not speak of the general magistracy of the country; but I have known a great many cases of the kind where magistrates have been solicited before they have sat on the bench; and they have adjudicated according to the sympathies they took with them into court, from hearing the first side of the story.

2809. Are you familiar with any districts in which the supply of local magistrates is very scanty?

I cannot say that I am. If I had my choice of magistrates (but I suppose that is not the object of the inquiry), I would get rid of the whole lot, so far as I can see, and appoint men who are skilled lawyers, who would inspire confidence in the country in the administration of justice; because I do not know any class of the people so anxious to have justice administered as the Irish litigant in the poorer courts; and I have frequently seen them coming out expressing great disgust, and explaining their reasons and the causes, which unfortunately I often found to be too true. And if I had my way in the matter, and could do any good, I would wipe away, so far as I can see, all the local magistracy.

2810. Have you observed any preference in the minds of those litigants, of whom you are speaking, for the jurisdiction of the stipendiary magistrate as distinguished from the jurisdiction of the ordinary local magistrate?

I have not, and I do not think myself that the stipendiary magistrates are selected at all from the proper class. I have had vast experience of them, and I speak now from 25 years constant intercourse with the people, and the administration of justice in the small courts, which to my mind are the most

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important of the country; and I do not believe that magistrates selected from police officers, retired captains, and persons of that class, are at all the fit persons be selected to administer justice in the country.

2811. Lord *Penzance.*] Are the resident magistrates chiefly of that class?
Very nearly all.

2812. *Lord President.*] You said that the administration of justice in the city of Cork gave complete satisfaction?
Decidedly.

2813. Are there not two resident magistrates there generally, who assist?
There is generally one; but there is a very large local bench, and the present gentleman, who is there, is a barrister?

2814. The present resident magistrate?
Yes. When I speak of resident magistrates, I have known resident magistrates who are as good judges as you would see on the bench; but I speak of the general class of resident magistrates, not of isolated cases.

2815. *Chairman.*] The only suggestion you have made so far, has been some modification of the present alphabetical rotation?
So far as I can see.

2816. You have no further suggestion to make I understand?
None that I can see at all.

2817. *Lord Privy Seal.*] Do you think that there is often a difficulty in finding persons who are fully qualified by character and standing, and so on, to be placed on the commission of the peace?
I do not think anything of the kind; I think there are a great many gentlemen quite suited and fit to be put on the commission of the peace who are not.

2818. Who are not on the commission of the peace you mean?
Who are not on the commission of the peace.

2819. You think there is no want of material, but that the best material is not always used?
I would say so.

2820. I suppose that varies very much, according to the district?
Certainly. The magistracy in the county is at present exclusively confined to the gentry, or with very few exceptions.

2821. That of course is the ordinary rule everywhere?
Yes.

2822. What class have you in your mind who might well be placed on the commission of the peace, and who are not?
Several gentlemen of such high position as what are generally known as country gentlemen or estated gentlemen. There are a great many respectable men of the farming class, such as gentlemen farmers, and persons of that class, who are men of very marked intelligence, and very great culture, and a good many of them, who are not on the commission of the peace.

2823. That case of so called Boycotting, that you told us of, in which the jury convicted the parties accused, was a town or city case, was it not?
No, it was a county case brought into the city of Cork for the county assizes.

2824. It was by a jury, not of farmers, but of shopkeepers?
Not at all; it was tried by farmers of the county. It was tried at the usual assizes. I think it was the last spring assizes, and tried by a county jury.

2825. Are

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2825. Are we to understand you to mean that in the present state of things in the south of Ireland, you would feel confident that an agrarian case would be properly dealt with by a Cork jury?

I could not say that. I would say that sympathy always will exist so long as national excitement is going on.

2826. But you treat it as an exceptional state of things?

I do, altogether.

2827. What class of juror is generally challenged on behalf of the prisoner?

Persons in high position or of well-known proclivities; that is not in cases of the kind to which we are referring; but in ordinary cases, such as the usual or ordinary case of crime. I do not think it applies in general to any particular class of person.

2828. In those cases do you find that generally jurors are challenged on behalf of the prisoner, merely because they appear to be men of education and social standing?

There is more than that in it. The people, as a rule, somehow have an idea that religion will interfere; in cases of that kind they think people of a different religion will have different views from those of the class that are tried, or against whom the charge is made. That very often enters into the mind of the people; and there is also the general knowledge that any person challenging would have as to the ideas in general of the juror who was about to be sworn.

2829. You told us that you hardly ever ordered a juror to stand by, on the part of the Crown?

I never did, but once.

2830. You spoke of that as a matter of importance and pride, as I understood. Do you say that in order to show that the jurors are so intelligent and perform their duties so well that it is not necessary for the Crown to exercise that power?

In the city of Cork, where I prosecute for the Crown, it is not necessary; and it was in that view that I stated it. You might misunderstand me in the answer I have given. The class of cases that I prosecute in the city of Cork have very little agrarian tinge about them; that is in reference to the city; it would be more in the county that that would apply to. I speak of the class of crime entirely confined to the city; and as to that, there is no necessity ever to order a juror to stand by.

2831. I think you said that in some prosecutions in which you had lately been engaged in the county that power had been exercised?

It has.

2832. Do you think that that was necessary and judicious?

In the case that I speak of there was an acquittal, although the Crown exercised its power of ordering jurors to stand by to a very large extent.

2833. It did not secure a verdict?

No.

2834. *Lord President.*] We heard something from one of the witnesses some time ago about cases that arose in Cork connected with the butter trade or the butter market; have you any experience of any cases of that sort?

In what particular, may I ask.

2835. It was said that questions sometimes arise connected with the butter trade?

I have no knowledge whatever of the butter trade, except from general conversations in the city. There is a case pending as to which an application was made (on the ground that the people of Cork knew too much about the butter trade in Cork) to allow the case to be tried in Dublin?

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2836. Would you trust the jurors of Cork in those cases?
Certainly.

2837. Lord *Ardilaun.*] I think you said that you had never challenged jurors when defending prisoners, during the considerable number of years in which you practised in the county?
Not the county; I speak of the city; but in the county too I do not think I challenged jurors half-a-dozen times?

2838. That is because you have such perfect confidence in the juries?
So far as I can see, I have perfect confidence in the juries.

2839. Even if you were defending a prisoner, and his life were concerned in the issue, you would not challenge, as I understand?
Certainly not. I have defended a great many persons for the crime of murder, but I did not consider it necessary to challenge any of the jurors.

2840. How can you account for the remarks made by Judge Fitzgerald at the spring assizes on the state of the administration of justice in Cork, after your opinion of the jury system?
That is Judge Fitzgerald's opinion; I suppose I must have my own opinion.

2841. You do not agree with him?
I do not agree with Judge Fitzgerald's opinion. There have been a good many cases in Cork in which there should have been verdicts, and in which there were not; probably the judge referred to those.

2842. There were a good many cases in Cork?
In which there might have been convictions.

2843. Or ought to have been?
Or ought to have been convictions if you like it so.

2844. If there ought to have been convictions, how can you think the state of things in Cork is so satisfactory as you represent it?
I qualified my evidence by stating that everything connected with national excitement creates sympathies in the minds of some class of jurors always. I speak generally of the state of crime in the country, and not of exceptional occasions. I admit at once that if there is any definite question raised in times of national excitement, sympathy will arise in the breasts of jurors on one side or the other.

2845. Then, under those circumstances, Judge Fitzgerald's remarks were more or less justified?
So far as that goes; there is a difficulty in getting jurors to convict prisoners in the present state of excitement on charges arising out of it.

2846. Lord *Penzance.*] Am I to understand from the last answers your have given, that the remarks you previously made as to the certainty of obtaining verdicts in proper cases were not intended to apply to cases of an agrarian character?
Certainly not.

2847. Therefore, in taking your evidence on the entirely satisfactory condition of the jury system, we must exclude cases of that character?
There always is a sympathy, and there always will be to the end of time.

2848. With jurors?
With jurors.

2849. However you constitute the panel you think that will be the result?
I think so.

2850. No

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2850. No change of the system that the Committee might consider desirable, or that they might recommend in the mode of forming the panel, would get rid of that difficulty?

If you exclude altogether from the jury qualified persons, and put on the jury persons with certain ideas of conviction, then, of course, you could get a jury to convict, if that is your way of thinking; but to my mind you might just as well try without a jury at all; that is, if you intend to have trial by jury continued.

2851. You think you might as well try without a jury at all, or better, rather than pack the jury?

Quite so; that is my view of it.

2852. But to any method that might be adopted of what might be called a fair selection of jurymen, those evils are sure to occur?

Most decidedly.

2853. No cure for them occurs to your mind?

None that I can see. And I will give an instance of a case that occurred at Cork recently; that is the case in which I said I prosecuted a gentleman who is now a Member of the other House. He was tried by a Cork jury at the winter assizes, a jury who were as intelligent as could possibly be selected; men of various shades, some highly respectable, holding high commercial positions, others not so high, and he was acquitted. That was in the city of Cork, where this sympathy could not at all extend to.

2854. Was that a satisfactory acquittal to your mind?

To my mind it was, on the evidence, a satisfactory acquittal.

2855. The jury did their duty well in that case, you think?

I think so.

2856. You have expressed yourself in other cases (excluding the case to which I have just referred) as being well satisfied with the present system?

Yes.

2857. You do not make any suggestion for improvement?

None whatever.

2858. On the other hand, with regard to magistrates, you seem to be as much dissatisfied with them as you are satisfied with the juror?

Upon my word, I am, from my general experience. I must qualify that by saying that I have met with magistrates in the county, who are as intelligent men as you could meet with in any part of the world; but in the remote parts of the country they are open to a great deal of influence.

2859. What is due, in your opinion, to the fact that they are not drawn from the proper class?

I cannot say how the fact is, or how you would take it, but such is my experience. I do not say the proper class; if you selected others, I think the influence might possibly be more than it is at present

2860. I think I understood you to suggest that it would be very desirable to have barristers or lawyers as magistrates?

That is my idea; I would get rid of the whole of the present class.

2861. If you got barristers, would they be free from those influences?

I would say so; the same as the judges who act locally. I never yet saw a judge in my life in any court influenced in any way by sympathy, or otherwise; they always give a fair and impartial judgment; I never yet saw a judge in my country do otherwise.

2862. That is what I understood you to mean when you said the magistrates were not drawn from the right class; you would draw them from the professional class?

I would; from the skilled tried lawyers.

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2863. Supposing that were done, and you had a thoroughly trustworthy class of magistrates, who were lawyers and men of business, do you think it would be a good thing to increase the present limits of the jurisdiction?
Most decidedly.

2864. So that you would get a prompt decision in the case?
Yes; speedy justice, to my mind, is the best administered justice; and when you allow it to hang over a long time it has not the deterrent effect it would have if speedily administered.

2865. You would prefer speedy administration by impartial judges, even with much lighter punishment?
Quite so.

2866. That, you think, would be an improvement upon the present system?
Quite so.

2867. Have you thought at all to what extent you would carry that system?
That question did not arise to my mind, except on hearing the evidence given here; then it occurred to me. The magistrates are limited to a certain extent now; if the prisoner does not plead guilty, they must return him for trial; I think the extent of jurisdiction, so far as I remember now, relates to an article not exceeding in value 5 *s.*; then the prisoner is asked: "Do you wish to be tried summarily?" and he says, "I do." Then he is asked, "Do you plead guilty, or not guilty?" He says, "Not guilty." And then he is told, "Well, as you do not plead guilty, we must send you for trial." That is the answer given, and they are bound to send it on for trial under those circumstances. In cases of that kind I would give magistrates a very increased jurisdiction, that is as to such a limited amount as that, because I do not see the difference in stealing a watch or a pencil case.

2868. You would, therefore, extend their jurisdiction in that respect?
Most decidedly.

2869. You would also make it imperative upon them to try the cases, and not send them to the sessions?
Certainly I would. And by that means you would get rid of a great lot of expense to the party accused. You would get rid of a great deal of public expense, because every Crown prosecution costs a great deal of money; and, to my mind, it would be a great and most beneficial change.

2870. Earl of *Derby.*] I think I understood you to say, that in defending prisoners, speaking generally, you had never found it necessary to challenge jurors?
Quite so.

2871. That, so far as you were concerned, the practice had been altogether unnecessary?
Quite so.

2872. Do you think that there is any necessity for giving so large a right of preremptory challenge as exists at present?
I do not think there is.

2873. We have had it repeatedly stated, in evidence, that prisoners' counsel will challenge one juror after another, until they have struck out those who may be presumed to be the most intelligent, and those who belong to the upper classes?
That is so.

2874. Do you consider that that interferes with the proper administration of justice?
Every person in a certain class likes to be tried by his peers; I suppose upon that

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that principle he likes to have a person in his own class of life to try him; and he would get as many as he could and reduce the number of the jury as much as he could down to his own class. That is the object of challenge, and that is the reason why it has been so often adopted.

2875. On the ground, I suppose, that he is likely to find more sympathy and favour with the people of his own class?
Quite so, and they understand one another better; what may look to you or to anyone else in another and a better class of life, as extraordinary, would look a very ordinary thing to the prisoner and to the jury.

2876. Sometimes the jury and the prisoner understand one another very well, do they not?
I have never known it.

2877. With regard to your general evidence as to the manner in which the jury system works, you have made an exception in agrarian cases?
Yes.

2878. They form a very large proportion, do they not?
Yes, at the present rate of crime in the country. I do not speak of agrarian cases, but any cases of a national character, in which there is a national sympathy one way or the other.

2879. Take such a case as this: one man has taken a farm from which another has been evicted; the man who has taken the farm is isolated and seriously injured; do you think you would have any chance of obtaining a verdict against a person who hurt him?
On the present formation of the panel in the county, I think there might be a difficulty in getting a verdict in such a case as that.

The Witness is directed to withdraw.

Mr. THOMAS FITZGERALD, is called in; and Examined, as follows:

2880. *Chairman.*] I believe you hold the office of Crown Solicitor for the county of Donegal?
Yes, and Londonderry; two counties.

2881. How long have you held that post?
Twenty-five years.

2882. Have you watched the different changes that have been made from time to time in the Irish jury laws?
Yes.

2883. Are you of opinion, that, upon the whole, those changes have produced satisfactory results?
I have carefully examined my books for the five years before the spring assizes of 1873, and for the five years subsequent to the spring assizes of 1873; and, arithmetically, the results are about the same, viewing the question as a mere question of acquittal and conviction; there is scarcely any difference between them.

2884. One thousand eight hundred and seventy-three was the date of the first amending Act, I think?
In 1873 the Act came into force at the spring assizes, therefore I take five years prior to the spring of 1873, and five years subsequent to the spring of 1873.

2885. Did not Lord O'Hagan's Act come into force until 1873?
No; it was passed in 1871, but it did not come into operation, and the lists were not out until the spring of 1873.

2886. Looking at it from any other point of view which may occur to you, do you think that the change has been a satisfactory one?

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I think it has been satisfactory, and the county officials regard it as a satisfactory change. I have consulted with my brother officers on the subject.

2887. Would you tell us, quite briefly, what are the results it has produced?
For the five years before the spring of 1873, we had 216 cases at assizes submitted to a jury; and of those 216 cases, 146 were found guilty, and 70 acquitted; that is to say, they found them guilty in the proportion of two to one. In the next five years 288 cases went to the jury for trial, and of that number they convicted 187, which bears very nearly the same proportion; adding five to it would make it, arithmetically, the same; so that the two systems have worked out really very much the same results.

2888. The most noteworthy change, I suppose, made in 1871, was the removal of the discretion formerly allowed to the sheriff in selecting the jurors?
Quite so; formerly the sheriff would select the jurors acting on his own judgment and discretion, and they did it fairly in Donegal and Derry. Subsequent to that they were selected in the manner provided by the Statute.

2889. Do you prefer the system of rotation to that of selection?
I do. I think it works better on the whole; people have more confidence in it.

2890. Then, as to the amended qualification, is that a satisfactory qualification?
It is now quite so. I have asked each of the officers in the county how it works out, and I am told that it works out well. It gives an ample jury list; the jurors attend and they do their duty fairly.

2891. That is to say, it is quite satisfactory in regard to the quantity of jurors with which it supplies you?
Quite so.

2892. And fairly satisfactory in regard to the quality?
Quite so.

2893. From what class are these jurors usually drawn?
In Donegal principally from the farmer class. On the panel, for the present assizes, which numbers 130, I think we have 99 farmers. In Londonderry the proportion of farmers is not so great; there are more of the trading class in Londonderry.

2894. What is your opinion with regard to the manner in which these jurors do their work?
They do their work very fairly.

2895. In every class of case?
I think so. Of course, in agrarian cases, or cases of riot, jurors from the neighbourhood of the riot would not do their duty fairly. We can scarcely expect them to be impartial; we have to tell them to stand aside. In all riot cases we tell the local jurors to stand aside.

2896. And with that object, I suppose, you attach importance to the power of ordering the jurors to stand aside?
Yes, to some extent. I have never exercised it up to the number that a prisoner does. The accused exercise it more than the Crown.

2897. It is the only means open to you of excluding from a jury a person whom you believe to be unfit to serve upon it?
The only means. Of course you might challenge, but you would have to give evidence, and you could not, perhaps, sustain your challenge.

2898. To come back for a moment to the question of qualification, what is the rating qualification for house property in Donegal?
£.10.

2899. Is that a proper qualification?
I think so; and I have asked the clerk of the peace of the county, and he says

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says it is. He is a better judge of the subject than I am; he attends the sessions and sees the working of it.

2900. You have told us that on the Donegal list there are 99 farmers out of 130?
For the present or coming July assizes.

2901. From what class will the 31 be drawn, the remainder?
Some of them are small mercantile men; some of them are magistrates; they are very few though. I have the panel here if your Lordship cares to see it.

2902. Does it distinguish the various classes?
Yes. (*The document is handed in.*)

2903. There seem to be a certain number of persons upon it who are described as "gentlemen." I see one or two are retired officers.
Yes, there are some of that class.

2904. And bank managers, and so on?
Yes.

2905. Do persons of that description take their fair share of service on the jury?
I do not think they do, and I think they ought to; they ought to attend.

2906. How does it come to pass that they do not take their fair share of service?
I think they do not care to be associated with the others. I have spoken to several of them, and told them that they ought not to leave everything in the hands of a petty jury, but that they ought to come in and attend. I have spoken to a great number on the subject.

2907. Therefore you have their own disinclination in the first instance?
Their own disinclination.

2908. Are there any other causes which tends towards the same result?
I think not; nothing but disinclination.

2909. Does it happen that the exercise of the right of challenge by an accused person tends to eliminate from the jury the better class of jurors?
In some cases it does. They really seem to me to challenge from their clothes, but in other cases it is not so.

2910. You would attach considerable importance to obtaining a leaven of this better class upon the jury?
Yes, decidedly so. The Scotch system works well where you have one-third special jurors and two-thirds common jurors. I have inquired about it.

2911. With regard to the conduct of the jurors, have you any remarks to make upon that point?
No, they have conducted themselves fairly in my two counties; we have no cause to complain of them.

2912. Has there been much agrarian excitement in the districts with which you are familiar?
Very little, up to the present time; we had last assizes some eight or nine agrarian cases, but we accepted their pleas of guilty, allowing the accused out on bail to be of good behaviour, and it worked, I think, satisfactorily; we did not care to submit them to actual trial, not knowing what the result might be.

2913. Do you think that the jury system in the districts with which you are familiar has yet felt the full strain of the excitement which is now passing over the country?
No, there is not much excitement of that kind; very little in Londonderry, and

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only in a portion in Donegal; it has not come upon us yet there, and I see no sign of it; for the present assizes we have very few for trial.

2914. In assault cases, do you find that the jurors are apt to be prejudiced in favour of the accused persons?
Very slightly so; they find true verdicts in assault cases; fair verdicts.

2915. Therefore, upon the whole, we understand you to say that you are fairly well satisfied with the class of jurors you get?
Quite so.

2916. And with the manner in which they have done their duty?
They have done their duty fairly.

2917. Do you find that they have improved by familiarity with work in the jury box?
Quite so; on their first service, when they first came in, they were a very awkward lot; that was in the summer of 1873, but they have improved since; every juror in the summer of 1873 was a first service man.

2918. With regard to the imposition of fines for non-attendance by jurymen, are fines often imposed within your knowledge?
No, there are very few fines; the practice is to call over the whole panel the moment the court sits, and those who do not answer are fined 40 *s.*; generally speaking there is a full answer, or jurors are excused for some reason stated in court, and after that they really attend well; there are very few fines inflicted.

2919. Is that 40 *s.* fine generally enforced?
Always, unless the juror is excused.

2920. Have you any suggestion to make to the Committee on a point as to which evidence was given just now in your presence; I mean the expediency of altering the jurisdiction of the local magistrates?
No, I think the jurisdiction is ample; in assault cases they can give six months' imprisonment; that is as much, I think, as they ought to be able to give; they can deal with petty larceny and embezzlement, and can give six months' imprisonment there.

2921. That would be a question of increasing the penalty which the local bench might impose; but you might bring certain offences within their jurisdiction without increasing the maximum penalty?
I do not think you could; I think they have ample power; sometimes they do not exercise it; they send to the assizes cases that they might dispose of themselves, but which in their discretion they do not dispose of; I do not think you could interfere with that; some assault cases sometimes comes to the assizes that might have been disposed of by the magistrates I think.

2922. Lord *Penzance.*] Did I understand you to say that you have had some cases more or less connected with agrarian matters that were tried in your district, or at least were not tried, but stood for trial, in your district, and the parties pleaded guilty?
Yes, we accepted pleas of guilty from them, accepting bail or their recognisances to be of good behaviour, and to come up for judgment if they misbehaved themselves.

2923. To come up for judgment if called upon?
To come up for judgment if called upon, on getting 10 days' notice.

2924. Were there many such cases?
I think there were eight at the last assizes.

2925. Were they the whole of those that stood for trial?
There was one in which there was an acquittal; in eight cases we accepted a plea of guilty.

2926. Did you accept those pleas of guilty after the first case failed?
I could not say that.

2927. It

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2927. It was not in consequence of it, was it?
No, we had a dread of the cases; we all felt that we were a bit uncertain in going before juries last time, and that it was better for us to get pleas of guilty, better for the peace of the county.

2928. Though no punishment was inflicted?
No punishment beyond being bound over to keep the peace, but all the cases were very trifling cases.

2929. What sort of cases were they?
Cases of intimidation, and taking forcible possession, no force being used beyond opening the latch and going in. They were cases of that kind.

2930. You were content with what I may call a barren triumph rather than go to battle?
Yes, quite so.

2931. Were these the first cases of the kind that had occurred with you?
The first.

2932. Earl of *Derby.*] As I understand you, certain persons committed what were undoubted offences against the law, and they were excused from all punishment on pleading guilty?
Yes, and giving bail to be of good behaviour.

2933. And that was done because you could not reckon upon the juries finding verdicts in such cases?
Quite so.

2934. No doubt the action of the prosecuting authorities may have been inevitable; but do you not consider that a failure of justice?
Very close upon it.

2935. A failure of justice, I mean, due to the impression that was entertained, and no doubt justly, as to the probable conduct of the jury?
Quite so.

2936. Viscount *Hutchinson.*] Have you any knowledge of Dublin juries?
Yes, I am a solicitor practising in Dublin.

2937. Then you have an opportunity of forming an opinion as to how Dublin juries perform their duties?
Yes.

2938. Do you find them satisfactory on the whole?
Quite so. We have a very large number of jurors in Dublin. Between Dublin county and city we have close upon 8,000 jurors.

2939. Have you any experience, or can you tell us anything about whether Dublin jurors are subject to the influences that other jurors in other parts of the country are?
I do not think they are; they are too numerous, and too scattered to be got at.

2940. Have cases of canvassing jurors, or anything of that sort, come under your notice?
There was recently a case under the old system. To commence with, there were only 48 jurors on the list; then that number was reduced to 24; of that 24, only 18 answered in court, and out of that 18 the accused had the right of challenging six, the Crown having no such right. That left only 12, and those twelve therefore were pretty well car-marked, and there-fore liable to be got at.

2941. I was not speaking of any particular case, but generally?
I do not think that in Dublin in a general way the jurors can be influenced.

2942. Have any cases of that sort come under your notice in Derry and Donegal?
No.

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2943. Lord *Monck.*] I think in regard to the counties you are connected with in the north of Ireland, you produced a panel which contained about 99 farmers out of a total number of 130 jurors?
Yes.

2944. And the balance was made up of the other classes?
Yes.

2945. You stated that the people who were not farmers did not attend very regularly?
They attend and answer on the first calling, but then they avoid afterwards serving if they get a chance of doing so.

2946. You said they were called and fines of 40 *s.* were inflicted; I am curious to know whether they pay the fine of 40 *s.* rather than serve?
They all answer on the first call, but when it comes to striking the jury, they avoid service by not answering the second time.

2947. Would not they be fined for not answering the second time?
Not if you can get a jury in court.

2948. You stated incidentally just now, that the Scotch system of mixing the jurors you thought was a good one?
Yes.

2949. Will you explain what that system is?
Under the Scotch system one-third of the jury must be special.

2950 On every jury?
On every jury.

2951. Lord *Penzance.*] Are you speaking of criminal cases?
Yes, of criminal cases; I have asked my agents there to report to me the result, and they tell me that it works very satisfactorily in criminal cases; they think that in civil cases it is rather a waste of time, and that the judge could do the whole thing.

2952. *Lord Privy Seal.*] Is it the case that in Scotland they have two separate lists of common and special juries, and that a certain proportion of every jury must be drawn from each list?
They must have a third of special jurors in each case.

2953. And that third must be drawn from the special jurors' list?
Yes; and you have on the panels before you a certain number of special jurors; it works out oddly; in some cases there will be a sixth, and in some cases a fifth; and in some cases a fourth of them.

2954. I do not quite understand that answer; would you explain it?
On the Derry panel for the coming assizes I think the number is 100, and there are 22 special jurors amongst them.

2955. On the common jury panel?
Yes. In the Donegal panel the number of special jurors is a little more. But it does not work out accurately in number when they come into the box, two or three, or may be one only answering.

2956. Lord *Penzance.*] Or there may be none?
Quite so.

2957. *Lord Privy Seal.*] Do you find that the number is diminished by the prisoner's exercise of his power of challenge?
That is just according to the case.

2958. How do you find that work in your experience; is the effect of the prisoner's power of challenge such as to get rid of the special jurors?
In some cases it is decidedly so; not in all.

2959. Lord *Penzance.* You mean in some class of cases?

Yes

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Yes, in some class of cases. I think if it were a case between landlord and tenant, any of the landlord class would be challenged by the accused.

2960. *Lord Privy Seal.*] Or anyone supposed to sympathise with the landlord class, I suppose?
Quite so; but in an ordinary case of assault I do not know whether that would be so.

2961. Then you attach great importance to the presence of a certain number of jurors of this class on a jury?
Clearly so; there ought to be decidedly a certain mixture of the class.

2962. You do not think they would merely have the influence of their numerical power, the number of their votes, but that they would also have an influence upon their brother jurors?
Certainly they would have a guiding power.

2963. Do you think there would be any danger of their being looked upon as a separate class in the jury box?
No.

2964. Do you think there would be any jealousy of that kind felt?
No; we have some three or four special jurors sometimes on a jury of twelve, and they are not viewed with jealousy or distrust, or anything of the kind; they sit together, and work well together.

2965. They come in by accident, and, naturally, at the present time; but suppose they came in by rule of law, by compulsion, do you think that there would be any danger of that kind?
I do not think there would; I know it is open to that suggestion at first sight, but I think they would pull well together.

2966. *Chairman.*] With regard to the fines, I understand the practice is for the whole panel to be called over?
From beginning to end.

2967. And any juror not answering to his name is liable to a fine of 40*s.*?
Yes; that is recorded, and he has to pay it.

2968. They then proceed to ballot for a juror?
Then, when the prisoner is put on trial, they re-call the panel, and ballot for a jury.

2969. And if any juror's name is balloted out, and that juror does not answer to his name, what happens then?
Nothing is said if we see that there is an ample supply of jurors in court, it is just merely passed by.

2970. And the better class juror who wishes to shirk, answers his name at the first calling over of the panel?
Quite so.

2971. But he does not answer it when his name is balloted out for actual service?
Quite so; but I think they ought all to answer.

2972. Would it be desirable that there should be a fine in cases where the juror does not answer to his name when it is called a second time?
I think so; but the judges are unwilling to inflict fines; they dislike coercion.

2973. Lord *Penzance.*] The judge has a power to do it now, has he not?
Ample power; unlimited power.

2974. *Lord Privy Seal.*] Provided he gets his jury, the judge does not exercise his power you say?
No, he lets it pass

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2975. *Chairman.*] I am not quite sure whether I understood your suggestion for securing the series of the third special jurors on the common jury; you would keep the two lists separate, I presume?
That is a mere matter of how you would practically work it.

2976. How would you insure getting your one-third of special jurors?
You would have to call eight of one and four of the other.

2977. Could you ballot two-thirds out of one list and one-third out of another?
Practically you would have to do so.

2978. *Lord Privy Seal.*] Supposing the presence of one third of special jurors upon every common jury were compulsory by law, of course then the attendance and action of the special jurors would be enforced as a matter of course.
Yes.

2979. They could not escape in the way in which they do now if that were the case?
They could not escape then.

2980. Lord *Penzance.*] What would happen supposing a system of this sort were in force; supposing the common jury list were gone through, and you had got right men in the box out of it, and then you proceeded to get your four special jurors. As we know the special jurors are not very numerous at present; suppose, when that list came to be called over, or the names came out by ballot, the prisoner exercised the power of peremptory challenge to the full extent of 20, might not that result in exhausting the special jurors' list?
It might, and you might have to adjourn the case; but no other result would follow.

2981. You might not get a jury all the same?
Quite so.

2982. *Lord Privy Seal.*] Have you ever thought of the possibility of increasing the special jury list by adding qualifications not now known to the law?
First, there are too many exceptions in the law as it at present stands, and they are exemptions of the special jury class. I do not see why they should exempt apothecaries, duly certified pharmaceutical chemists, civil engineers, public notaries and actuaries entitled to grant statutable certificates, professors, schoolmasters or teachers. These are all, more or less, of the special jury class, but you exempt the whole of them. I do not see why they should be exempted. Then you come on till you finally exempt anybody who is described as "heretofore exempted by virtue of any prescription, charter, grant, writ, or local Act of Parliament." In my opinion a number come in under that. There are too many exemptions.

2983. Do you think that the diminution of exemption would have much effect?
It would have a considerable effect. Then you ought to admit as special jurors sons of grand jurors, or men who are on the commission of the peace in the county, although they may not have a rating qualification.

2984. You would be inclined to go beyond the leasehold qualification?
Yes; that is after all a very unsuitable test of a man's suitability.

2985. *Chairman.*] You are aware that there is a clause in the Act under which certain qualifications of that kind are introduced. You would like practically to add to the number?
Yes.

2986. *Lord Privy Seal.*] Are there any persons so qualified on these panels?
I do not think there is one.

2987. Lord

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2987. Lord *Monck.*] Do those exemptions that you have read to us apply in the Scotch law as to the special jurors?
I am not aware.

2988. You cannot tell whether any of the inconvenience alluded to by the noble Lord occur in Scotland?
I have the Scotch reports in my hotel, and I could answer the question to your secretary, but I think some of them do occur.

2989. Have you heard whether the inconvenience of not being able to get proportion of special jurors ever occurs in the Scotch courts?
No, the only question I put to the Writers of the Signet was, as to how the thing worked out practically, and whether it worked out satisfactorily; and they replied to me that it works out very satisfactorily, except that in civil cases it entails a loss of power and a loss of time.

2990. Lord *Penzance.*] Are there many exemptions that come in under what you read, namely, by "writ or charter"?
Yes; I have myself urged the plea for exemption on behalf of Trinity Board men in Dublin, that they were, by prescription, entitled to exemption, and got them exempted.

2991. That excluded a number of people, you think, from the jury list?
I should think it would.

2992. Lord *Monck.*] Do you mean the Irish Lights Board when you speak of the Trinity Board?
Yes.

2993. Who claimed exemption there?
Some of the clerks claimed exemption.

2994. That could not make any great difference, could it?
That is only one class; you asked me for an instance, and I give you the first that comes to my mind; there are only very few clerks there.

The Witness is directed to withdraw.

Adjourned to Tuesday next, at Twelve o'clock.

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Die Martis, 12° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Silchester.
Lord Privy Seal.	Lord Monck.
Lord Inchiquin.	Lord Ardilaun.

The MARQUESS of LANSDOWNE, in the Chair.

Mr. CHARLES KELLY, Q.C., is called in; and Examined, as follows:

2995. *Chairman.*] I believe you are Chairman of the County of Clare?
I am.

2996. How long have you held that office?
About three or four years.

2997. Had you had any official experience of any kind before that?
Before that I was chairman of the county of Longford for 13 or 14 years. I may also state to your Lordships that I am a magistrate for the county of Galway; for a great many years I practised on the Connaught Circuit; since I have been changed to Clare I have given up my profession, but I attended the Galway Assizes regularly up to that time, and since that time I have occasionally attended them.

2998. During all that time you have, of course, had great opportunities of watching the operation of the Irish jury laws?
I have, in every part of Connaught, and in Longford and Clare; and I have resided a good deal for the last two years in Galway, where I farm and live on my own property.

2999. Will you state to us, in the first place, in general terms, your opinion of the changes in the jury laws which were introduced in 1871, and afterwards slightly modified in 1873 and 1876?
I think that it was quite proper to do away with the selection by the sheriff.

3000. You approve of the abolition of the sheriff's power of selection?
Certainly.

3001. Upon the ground that it was actually abused, or that it was open to the suspicion of abuse?
Rather that it was open to the suspicion of abuse. I am sure that there were cases of abuse, but I do not wish to state that they came before me. I have heard of them, but I could not say more than that the system was open to the suspicion of abuse, and to want of confidence in the administration of justice.

3002. Then passing to the next point in which the law was changed, viz., the substitution of a rating qualification for the old qualification, does that also meet with your approval?
It did at the time. At the same time I think that the rating qualification ought not to be the sole qualification.

3003. You approve of a rating qualification in principle?
As one of the qualifications I do.

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3004. May we take it also that you are in favour of a rotation of service determined in the present manner?

That I think is immaterial. The present rotation is, in my opinion, as good as drawing by lot; it makes very little difference. I might perhaps prefer the drawing by lot, but there is no objection to the alphabetical rotation, or at least I see none.

3005. Assuming then that there is to be a rating qualification, do you think that the present qualification is a proper one?

I think it is too low. If your Lordship would wish, I can give some instances of it. In the county of Clare, of which I am chairman, there are 1,080 jurors; and I am quite convinced that the jury books would be much better composed if you could raise the qualification so as to leave the number at 400 or 500. In saying this I am not in the slightest degree throwing any imputation upon the character of the jurors, or in the slightest degree disparaging their character. They are most of them very respectable men, but their minds are not sufficiently trained to enable them to appreciate the weight of evidence, or to be free from local prejudices or influences. I would strike off all publicans, however high they might be rated.

3006. Have you considered whether, with a jury list of 400 or 500 instead of over 1,000, the burden of service on the jury would not weigh too heavily on those who made up the smaller number?

I have, and I think that by management it would not weigh too heavily.

3007. Have you considered what rating qualification would give you at least that 400 or 500?

I have not gone through the list carefully so as to fix it, but I am quite sure that if the qualification were raised from 30 *l.* for common jurors up to 80 *l.* or 100 *l.* it would be an improvement.

3008. You would raise it to as high a point as you could, consistently with obtaining a sufficient number of jurors?

Yes.

3009. The rating qualification for land, I think, is 40 *l.*, and for houses a much lower sum?

I do not think it is so much in Clare, but I am not quite sure; I think it is 30 *l.* for a common juror in Clare.

3010. But when you speak of the qualification being too low, are you referring to the qualification for houses as well as to the qualification for land?

I am, but particularly to the qualification for land.

3011. I think a witness who has already been examined from that part of Ireland as to which you speak, has told us that the panel in Clare is composed to a very great extent of persons of the farming class?

I have brought with me the panels of the last sessions and of the last assizes, and I think they throw great light upon the subject, and illustrate what I was saying about the jurors belonging almost exclusively to a particular class, particularly in my court. I hold in my hand the panel for the last June Sessions of 1881. There are 60 names on it, and every juror on that panel with the exception of nine, I think, is a farmer; that is to say, there are over 50 farmers on a panel of 60, and the remainder are shopkeepers in small towns whose customers are all farmers. I have nothing to say about the respectability of those men, but in most of the cases that are tried before me (independently of larceny cases), such as cases of assaults and cases connected with the title to land and with the possession of land, I think it would be much better if we could get a class of jurors who would not be so entirely of the farming class. Another suggestion which I would make to your Lordships about that is, that there is a grand jury called at the sessions, and the grand jury cannot act as common jurors. I do not know that there is any strict legal disqualification, but in point of fact and practice I believe they are not called upon the jury panel before me. The consequence is that it takes away 23 of the very best jurors; I say also that the magistrates ought

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ought not to be excluded from the panels in the Courts of Quarter Sessions. The reason why they are excluded is because they are supposed to be the judges, as they are in law; every magistrate in a county is at liberty to attend at Quarter Sessions on an equality with the Chairman; I am merely their Chairman; but practically they do not attend, and I have never more than two or three magistrates. The effect of that is that they are relieved from acting as jurors in my court, and they do not act as judges. There are sometimes in our Courts of Quarter Sessions very important cases, requiring as much intelligence and as much training and education as cases that are tried in the Assize Courts.

3012. Then what it comes to is this: that you have on the jury list a small minority of persons who are above the level of the farming class, and that that small minority is by various circumstances, some of which you have described, prevented from serving on the common juries?

Exactly; but I may put the case still more strongly than that. In the division of Kilrush, which extends over a very large part of the county of Clare, there are only 30 special jurors, the effect of which is (and it is very hard upon them) that they are summoned four times a year to the sessions; they must be, because there are 23 grand jurors, and they are entirely excluded by that from the common jury panel, so that the common jury panel is left entirely without any special jurors on it, and with the persons on it whom I call the least fit to be on it; not from any want of respectability, or anything of that kind, but because they are the least intelligent, and the most likely to be subject to prejudice and sympathy with the accused person.

3013. Several of the witnesses examined before this Committee have told us that, independently of those cases, the better class of jurors are rather averse from service in the jury box; is that your impression?

It is strongly so at present. I do not say that it has always been so; but there cannot be any doubt that, at present, the greatest possible unwillingness to serve on juries exists on the part of all classes. The lower orders object to it strongly; I know it from their objecting to it in court. It is not merely from their want of attendance there that I know it; but in the county of Galway, for instance, they come to me to know how they are to get off service on the jury, and the tenant farmers have often expressed to me the greatest disinclination to serve on juries.

3014. Lord *Inchiquin.*] That is entirely independent of the present agitation?

I will not say that.

3015. I ask that because you say that you find it so in Galway?

The agitation in Galway is perhaps stronger than it is in any other part of Ireland.

3016. But your experience there was before you came to Clare, was it not?

Both before and since. I am speaking of Galway because I reside in Galway, and I have lived there almost altogether for the past two or three years, and I have had a great deal of communication and intercourse with the class from which the jurors are taken. I farm extensively there, and I am consulted constantly as a friend by tenants, who come to me when they are in any difficulty, and by landlords also. The lower orders strongly object to serve on juries, and the better class of jurors, who do not mind the fine, do not attend. The humbler classes attend because of the fine of 40 *s.*; it is very seldom more; but some gentlemen have told me recently that they would rather pay 20 *l.* or 30 *l.* than serve on juries.

3017. *Chairman.*] We have been told that not only is the fine not a deterrent of the better class of jurors absenting themselves, but that, as a matter of fact, those jurors by not answering to their names when the list is called over a second time very often escape without being fined?

They do. They are often in court; I know them to be in court; I have seen them, in fact, in court; and if there is a sufficiency of jurors to try the case, the judge is very much disinclined to fine those who do not attend.

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3018. We have been told that the right of challenge that is allowed to the accused operates also towards the exclusion of these better class jurors; do you concur in that opinion?

There is not a doubt of it. At present, in a Crown case, there cannot be a special jury except what is called a special jury under the old system, and in that case the prisoner now has the right of striking out 18 out of 48.

3019. But the right of challenge is allowed to the prisoner not only in the case of a jury struck under the old system?

There is no special jury under the present system in criminal cases.

3020. But I am speaking now of common juries?

I am not sure of the number that they have a right to challenge, but there is no doubt whatever that they challenge every good juror. One juror told me that he attended at the last Winter Assizes in Galway, and that he was challenged in every case. He is a most efficient juror, a Roman Catholic, extremely popular, a most impartial man, and a man of the highest character; and he told me that he was challenged in every case except one case, which was a trifling larceny case.

3021. Then do we correctly understand you to say that this right of challenge is abused, more especially in the case of juries struck under the old system?

I do not consider it an abuse if the prisoner has a right of challenge that he should exercise his right.

3022. But do you think that the operation of it is more conspicuous in the case of juries struck under the old system?

Its operation is injurious to the administration of criminal law; it operates against the efficiency of the jury; but in the case of the special juries under the old system I look upon it as fatal, as the challenge extends to 18 out of 48.

3023. It operates adversely to the interests of justice in the case of ordinary juries, and it is fatal to the interests of justice in the case of the special juries struck under the old system?

I think so, because the right of challenge extends to 18 out of 48, and the proportion of good jurors in any panel of 48 would never amount to 18, taking an ordinary jury of any class.

3024. The number of jurors being small in that case, the prisoner, by exercising his right of challenge, virtually gets the selection of the jury?

He does, because he strikes off more than one-third; he strikes off nearly half.

3025. Will you tell us how these juries, composed as you have described, have conducted themselves according to your experience; were you satisfied with their conduct before 1871?

I should not like to say that. I am not satisfied with it now. In the first place I do not think that they are sufficiently trained or sufficiently educated. Supposing a case of assault, and the defence is self-defence, or an alibi; there is contradictory evidence, and a number of witnesses are examined for the defence; the jury get confused; they may be most respectable individuals in their class of life; they may be excellent men for buying stock, and in the ordinary relations of life, but when it becomes necessary to weigh evidence they are utterly unfit for it. They do not see the distinction sometimes between the statements of counsel and the evidence.

3026. Are you speaking now of the juries before 1871 or since 1871?

I am speaking of juries since 1871.

3027. The object of my question was to ascertain whether before 1871 you were on the whole satisfied with the conduct of common juries?

I am not in a position to state whether I was or not; my impression is that there

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there were occasionally very bad verdicts before 1871; but I could not give any satisfactory information on that point.

3028. Then as to the defects which you have observed more recently, do you make that observation with regard to the conduct of juries in all cases, or only in a particular class of cases?

In cases of larceny and in cases where local feeling is not excited, they generally do as I direct them. I have no complaint to make as to their conduct in matters which are not connected with land. But I very often go further in the way of guiding them than a constitutional judge ought to go to get their verdict. It annoys me to have to do so; but when there is local feeling, if the case is anything arising out of local circumstances, and particularly if the jurors come from that locality, I look upon it as almost hopeless to get a verdict.

3029. In a case of that kind, however strong the evidence was, should you feel any confidence that the jury would do their duty?

I should not; I do not say that this proceeds from perverseness or from misconduct. They are perfectly convinced that the way to put a stop to offences connected with land is not by punishment; they are perfectly convinced that the proper mode of putting an end to such offences is by the landlords not taking proceedings calculated to provoke them. The verdict is not that the man is not guilty of the act, but that he ought not to be punished for it. They do not appreciate their real duty as jurors; they think their duty as jurors is to decide not whether the accused committed the act, but whether he ought to be punished for it.

3030. They are endeavouring to enforce a kind of law of their own which is present to their minds and which is more obligatory upon their consciences than the law of the land?

I do not think the majority of them approve of these outrages; the great majority of them probably disapprove of them; but they go with the current. Some of them are influenced by fear; their cattle and their persons are exposed to danger. No farmer would dare to go against the current of public opinion in his locality; no gentleman does so, much less a poor farmer. Besides that, there is a feeling, I will not say of sympathy, but rather of prejudice; they think that these agrarian crimes have been brought on by what they consider the misconduct of landlords in evictions, and other acts of that kind which they disapprove; and they think it is very hard to punish the poor people who have been provoked to it. I do not think it is from any perverseness; I think that many of them who have come to that conclusion are extremely respectable men in every other relation of life.

3031. If you had upon these common juries a certain number of persons of that superior class to which you referred just now, would there be more chance of their finding proper verdicts?

In my opinion the verdict ought to be given by a certain majority, perhaps two-thirds.

3032. That is not quite the object of my question. I wish to ask whether, supposing that minority of better class jurors who are now, from various causes, excluded from the jury box, were represented in the jury box, you would have any confidence that you would get more satisfactory verdicts?

Certainly. I am perfectly certain that if gentlemen attended, they would have enormous influence upon the humbler class of jurors. In fact, some gentlemen have told me that when they have been on a jury, some of the humbler class of jurors have asked them how they must vote, saying, "I will vote as your honour wishes," "whichever way your honour tells me." There is no doubt that the attendance of gentlemen on the juries would have a beneficial result.

3033. And you would like to accept the verdict of the majority, anticipating, I suppose, that the majority would follow the lead of these two or three more intelligent jurors who might happen to be serving in the jury box?

Yes;

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Yes; I would put a few more than two or three; but I would accept the verdict of two-thirds.

3034. How would that operate in a case in which the majority of the jurors were affected by local prejudices, and in which, under the present system, the presence on the jury of two or three jurors not so affected would ensure a disagreement; in such cases would not an acquittal follow as a matter of course?

It probably would, but your Lordship contemplated putting only two or three gentlemen on the jury; whereas I would have the jury so composed that more than two or three out of the 12, I would say the majority, would be of a higher class of jurors.

3035. It would be a little difficult, would it not, to feel quite sure under any system of the character of the 12 persons whom the ballot might bring together in the jury box?

Very difficult; and it would be difficult to say, at any moment, on which side the balance would be. At present, during this state of excitement and passion, and, in fact, mania or craze which now exists in Ireland, I think trial by jury ought to be suspended in a certain class of cases, and those cases ought to be tried by a judge or by judges.

3036. You say that you believe that while the present excitement continues, no jury, no matter how constituted, could be depended upon to withstand the current of public opinion?

That is my firm conviction.

3037. Now, will you tell the Committee how you would propose to secure the services of a certain number of these better class jurors?

In the first place I would abolish the grand jury, particularly in the Quarter Sessions Court. I do not see the slightest use, either at the Assizes or at the Sessions Court, of the grand jury in criminal cases. Practically, it excludes from the common jury the very best jurors upon the panel. In the division of Kilrush, in the county of Clare, it excludes them altogether, because the grand jury panel in that division leaves none but common jurors to try the cases.

3038. *Lord Privy Seal.*] It absorbs the special jurors?

It absorbs the special jurors, or nearly so, so that I have to try some very important cases with what I must call the class least fit to serve as jurors.

3039. *Chairman.*] How would you propose, then, to provide for the performance of the duties now discharged by the grand jurors?

The duties of grand juries in criminal cases are, in my opinion, quite useless. Clare is, in ordinary times, a singularly peaceable county; perhaps some districts now may not be so; but it is singularly free from ordinary crime, and I am of opinion that not only in Clare, but in general throughout Ireland, one sessions at the assize town would be quite sufficient for the trial of all criminal cases at the Quarter Sessions. At present 60 jurors are summoned at Kilrush, and 23 grand jurors; that is, 83 every sessions. My suggestion, if adopted, will dispose at once of four times 83.

3040. Lord *Inchiquin.*] You would do away with the Kilrush Sessions?

I would do away with all the sessions for criminal cases throughout Ireland, except at the county towns.

3041. *Lord Privy Seal.*] You would keep up the Civil Bill Courts as they are?

Yes, certainly; my suggestion only applies to sessions for the trial of criminal cases. I will give you an instance of it. I have been at Kilrush for three sessions now, and more than 80 jurors have been summoned, and must be summoned, and I must call them on fines, which is rather a hard case; and there has not been a single criminal case tried at Kilrush for three sessions. So that there is a waste of 80 jurors four times a year. The county town is the centre of attraction. It is the place to which, from all parts of the county, gentlemen, jurors, merchants, and farmers, are in the habit of going; and even supposing

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supposing that it is a few miles farther, the difference in travelling is very slight, and the expense in the town while they are there is the same. It is the same with the witnesses. Another advantage in having the sessions in the county town, besides diminishing the number of jurors required, would be the removal of the trial from the locality. It was originally fixed in the locality in order that the jurors might be taken from the locality. That has been, I think, most objectionable. In the assize town the jurors are taken from the entire county, and therefore there is not so much local prejudice or local feeling and excitement.

3042. Lord *Inchiquin.*] It would be a long way to bring your witnesses, 22 miles?

It would; but the expense of travelling is not great in proportion to other expenses. A great part of the district of Kilrush is nearer to Ennis than it is to Kilrush. The difference in the expense of travelling would be trifling, and the expense in the town would be the same. There are very few cases from the remote districts of Kilrush. My view is that for the last three sessions to bring 80 jurors to Kilrush, when there was not a single case to be tried there, was a great abuse, and quite unnecessary. In the next place, I would diminish the number of sessions at which the attendance of jurors is required. I held my sessions this year in the last week in June; the assizes were held the first week in July. Was that necessary? Could not I have tried all the cases if I had had a good jury; or could not the assize judge have tried all the cases? Was not that a waste of jurors, bringing jurors there twice when one batch of jurors would have been sufficient?

3043. Is it the case every year that the quarter sessions and the assizes are held so near together?

It is. This year I was obliged to advance my sessions in order to avoid the assizes. My sessions are always held at the end of June, and the assizes of Clare are held in the first week of July, and sometimes at the end of June. Nearly the same thing occurs in March; the spring assizes and the March sessions occur about the same time. If my suggestions were carried out, the result would be that in every year there would be two assizes and two sessions only at which criminal business would be discharged. I think that is quite enough. Almost all offences are bailable now. There would be then only four occasions in the year on which a jury would be required.

3044. *Chairman.*] Instead of how many?

Instead of six; and by that means 100 or 120 jurors at each of those four, would make only 500 in the year.

3045. Those being all men of the special juror class?

No, I am talking of the common jury. At present there is no special jury in Crown cases.

3046. You answered a question just now with regard to the right of challenge which is now allowed to the accused; do you think it is necessary to allow as many as 20 challenges in cases of felony?

I know that it is not the general opinion, but I think it is too many.

3047. I think you stated a moment ago that if the present excitement continued in parts of the country, you believe that nothing short of a suspension of trial by jury would prevent a miscarriage of justice?

That is my opinion in a certain class of cases. I believe that unless trial by jury is suspended in these cases it would be better to discontinue prosecuting them, inasmuch as verdicts of acquittal being regarded by the people as an approval of the acts, they are calculated to encourage these offences.

3048. How far would that miscarriage of justice be prevented by having resort, as is now sometimes the case, to a change of venue where the original venue lies in a disturbed district?

It would, to some extent, have a beneficial effect. I am of opinion that the Attorney General ought to have the power of changing the venue in

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any case in which he certifies that it is necessary, and that there is local feeling, I look upon the Attorney General as being quite impartial; he is under the influence of public opinion; he is generally a member of the Legislature, and I think that he is just as likely to act with impartiality as any other court or tribunal in deciding whether a change of venue ought to take place, and I think, on his certificate, the venue ought to be changed. I think also that, on his certificate, there ought to be a special jury under the present system; that is to say, a special jury not under the old system. In civil cases both parties have a right to call for a special jury; why should not the same right exist in criminal cases? I would give the prisoner the same right that I gave the Crown.

3049. You would give the Attorney General the power of changing the venue by a certificate, I understand you to say; would that be in order to avoid the delay of an application to the Queen's Bench?

Partly to avoid the delay; but not so much for that reason as because there are a great number of circumstances known to the Attorney General which cannot be proved by affidavit before a court of justice; it would be prejudicial to the administration of justice if he were to state them, and, in fact, in many cases they could not be stated publicly.

3050. It has also been stated to us by some witnesses that if the summary jurisdiction of the magistrates were increased they might be enabled to deal with a number of cases which now go on for trial, and which could be best dealt with by prompt and yet not very severe punishment, such as the local magistrates are now able to inflict in certain cases; should you be inclined to recommend such an increase of their jurisdiction?

I am entirely of that opinion, and I have already made that statement to the Government at the Castle lately. The magistrates (and I am not throwing the slightest blame upon them for it) are in the habit of sending cases to me which, in my opinion, they ought to try themselves.

3051. That answer would rather point to the conclusion that what you want is, not to increase the jurisdiction of the magistrates, but to move them to take a little more upon their own shoulders?

I would do both, but I would increase their jurisdiction in this way: in the first place, I would give them jurisdiction to try all larceny cases up to 10 *l.* or 20 *l.* I cannot understand why three magistrates could not try a larceny case of the value of 10 *l.* as well as any jury, and to the satisfaction of the public. In a certain class of offences I would not give them any discretion to send the case for trial, for instance, in cases of common assault. I think a definition could be suggested, although I am not prepared at this moment to suggest one; but there are a certain class of offences which they might be obliged to decide summarily, for instance, any assault cases where no grievous bodily harm had been done. At present the magistrates have no jurisdiction to try cases in which title to land is involved. Most of the assault cases being in some way or another connected with disputes about land, or bog, or right of way, or of turbary, the magistrates generally send them on for trial at the quarter sessions or assizes. I would empower them to decide all these cases without prejudice to the right.

3052. In those cases where the penalty reaches a certain amount, the person upon whom it is imposed has a right of appeal, has he not?

Yes, when it is over 20 *s.* he has a right of appealing, or sometimes, when it is 40 *s.*, or sometimes when it is 5 *l.*; but, generally, it is over 20 *s.* at the ordinary Petty Sessions.

3053. Would you leave that right of appeal?

Certainly; I would leave a right of appeal in any case from the magistrates' decision to the chairman.

3054. But you would make it obligatory upon the magistrates to deal with such a case in the first instance?

Summarily, with the right of appeal to the chairman without a jury. The Act of Parliament states that on an indictable offence the prisoner *may* apply to the

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the magistrate to send the case to trial at the assizes or the sessions, and that the magistrate *may* send it, as well as I can recollect the words of the Act. Some of the magistrates do send these cases for trial; they are under the impression that it is more constitutional, or, for some reason or other which I cannot fathom, they think they are bound to a certain extent to send them for trial, and a large number of cases which they send for trial might easily have been disposed of by the magistrates. I might cite a case which occurred at the last sessions, and which I spoke very strongly about, from Ennistymon.

3055. *Lord Privy Seal.*] The cases of which you speak are not cases in which the prisoner has anything to do with it?

I do not know whether the prisoner applied in that case or not; but the magistrates very often send me cases which they have power to try themselves.

3056. But you are not speaking of cases in which the prisoner has the option of being tried summarily?

In my opinion the Act of Parliament does not give the option to the prisoner. He may apply, and the magistrates may send the case for trial, but my construction of the Act of Parliament is that they are not bound to send the case for trial. "May apply" and "may send" are the words, and not "shall apply" and "shall send."

3057. Lord *Ardilaun.*] Do the stipendiary magistrates act in the same way as the others in sending on cases for trial?

They do. Where there is contradictory evidence, as, for instance, in cases of assault and cross assault, that is the very case magistrates ought to decide, because they hear both sides, whereas the jury hear only one side. When there are two cases to be tried, and they are trying the first case, the jury do not know what the prisoner will say, whereas the magistrates hear both cases before they decide, and where there is contradictory evidence they think they are bound to send it before a jury.

3058. *Chairman.*] Assuming that it is desirable that the magistrates should deal summarily with such cases, how would you propose to induce them to do so?

I have stated, I think, already that I would make it compulsory. I am not prepared at this moment, very accurately, to state the definition; but I would define the offences which they would be bound to decide summarily. At the present time they have only power to commit for two months; I would extend it to three months, or perhaps more.

3059. Is what you suggest a change in the law?

Yes; I think it would be better to change the law, to make it compulsory. I am not saying that they do it corruptly, but there is a natural timidity about them, and they would rather let the case go to a jury. They live in the locality, and probably know the parties.

3060. Lord *Inchiquin.*] Do you not think that the magistrates very often refuse to deal with a case, because they think it so serious, knowing that there will be an appeal?

I think so. They are under the impression that in a case where there is contradictory evidence they are bound to send it on for trial. Take the case that arose at Ennistymon the other day; about 10 or 12 persons were sent for trial for an assault upon some witness who had given evidence at the winter assizes at Cork, and the magistrates came to the conclusion that that case ought to be tried by a jury. It was a case in which I coaxed the jury to give me a verdict, and I induced the other side to plead guilty, and then I let them all out on their recognizances to come up and submit to judgment when called upon. Surely the magistrates could have done that themselves.

3061. *Chairman.*] Your experience extends over a considerable extent of

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country, and you, therefore, must know a great deal about the different local benches, I presume?

I do.

3062. Is it the case that in any of those districts the local bench is numerically very weak?

My impression is that the best magistrates do not attend; and I would do the same with the bench as is done with committees of public bodies (you will, perhaps, be shocked at my saying that), if they do not attend a certain number of times I would strike them off. I would compel them to attend, and then they would attend; but they are not paid for it, and as a matter of fact, they do not attend so much as they ought to do. I, myself, very seldom attend, though I have been a magistrate for a great many years of the county of Galway.

3063. Would it be necessary, in your opinion, that the local magistrates, when dealing with these cases to which you have referred, should act, not by themselves, but with the stipendiary magistrate?

Certainly.

3064. The presence of a stipendiary magistrate would ensure an amount of confidence in the minds of the public which might not be commanded by the local magistrates sitting alone?

Yes, that is one reason. Another reason is, that the stipendiary magistrates have more experience in dealing with these cases, and that they are better acquainted with the law.

3065. *Lord Privy Seal.*] I do not think you quite explained your views as to the best means of securing the attendance of jurors of the special jury class on common juries; you made suggestions, which I understood to be for the purpose of economising jurors and rendering a smaller number of jurors than at present exist on the jury lists sufficient for the purposes of justice; but is that with the view of raising the qualification?

Of course that would be so.

3066. Supposing that the necessary number of jurors were reduced by such means as you have suggested, do you contemplate raising the qualification?

Certainly; and besides raising the qualification, I would put on the jury lists a vast number of persons well qualified to be jurors who now escape. For instance, half-pay officers, militia officers, engineers, magistrates, sons of magistrates, sons of peers, country gentlemen, merchants, and others.

3067. Persons not possessing a rating qualification?

Persons not possessing a rating qualification; I would put them on the jury. I would leave it to certain public officers, the clerk of the Crown, the clerk of the peace, the chairman, the Crown solicitor, and the sheriff, to put on the list every person whom they believed to be worth a certain annual income of say 100 *l.* a year. Why should it be a rating dependent upon land? If a man has 100 *l.* or 200 *l.* a year the presumption is that he is more educated, better trained, and better able to decide cases than a more humble man. I could not tell you how large is the number of persons who escape altogether now. There are stamp distributors and bank clerks; clerks in public offices and mercantile establishments, and many others; these gentlemen could always be spared for a day or two. I would have every individual on a jury unless he was actually engaged professionally in some way or other at the time.

3068. Would you send the sheriff to summon them?

The chairman settles the jury books, with the assistance of the clerk of the Crown, the clerk of the peace, the sheriff, and the Crown solicitor, and perhaps some tax collectors; and I could get at every person qualified to act as a juror whom I believe to be living at the rate of 100 *l.* or 200 *l.* a year, and I would put him on the jury list.

3069. Then you think that the chairman should be the person who should have power to pick out these gentlemen?

Yes,

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Yes, but I would not let him do it capriciously or of his own *mero motu*. I would lay down a principle to guide him; for instance, I would declare that any man who was believed to be, or proved to his satisfaction to be, worth 100 *l.* or 200 *l.* a year, either from the funds or from land, or from any other source, should be liable to serve on a jury. Why should not a man who is in receipt of 500 *l.* a year from the funds be a juror? The reason rating is taken is because it is the simplest way of getting at it, but it is only a matter of trouble.

3070. Supposing that you were about to enter the name, say of a bank clerk, upon the jurors' list, would you give him an opportunity of showing or saying that he had not 100 *l.* a year?
I would.

3071. You would give him notice?
I would put him on the list and he might object. The list is made in July and comes before me in October, and I strike names off if I am satisfied that they are not qualified or that they ought to be exempted.

3072. But in that case somebody else must have put them on the list?
I might settle the list in June on evidence before me, and then might give any person who claimed exemption till the next sessions to come before me and give notice of objection. The lists are all posted at the different market places. Besides a man must look out for himself to see that his name is not improperly put on.

3073. But he must have time and opportunity to object?
Supposing that I put him on at the June sessions he has till the October sessions, when the final revision comes on for the following year.

3074. You think it would work easily in that way?
I do. That is not giving to the Chairman an option of selecting or anything of that kind; it is merely directing him to ascertain those who possess a prescribed qualification.

3075. Would you also propose to raise the rating qualification?
I certainly would. For instance, as I have already stated, there are at present 1,080 jurors in the County Clare. I am perfectly certain, without saying one word disrespectful of them, that if 500 were struck off it would be a great advantage to the administration of justice. They do not themselves wish to be jurors.

3076. Can you form an opinion as to the amount of the increase in the rating qualification that you would advise?
That I could not tell; I have not had time to go into that question; but if your Lordships wish I could get it before this day week, and I will get exactly the amount which would be sufficient in two or three counties.

3077. Have you any acquaintance with the Scotch system under which the presence of a certain proportion of special jurors is necessary?
I have not. I would not allow a trial to go on unless nine-tenths of the panel were present. At present the greatest abuse occurs in that way. The panel is called once during the sessions, generally at the beginning. They then disappear, and it is with the greatest difficulty that the judge can get a panel sometimes. I am told by the officers sometimes, "If you let these men off we shall not get another panel." They all disappear. It is very distasteful to me to fine them, and I very seldom do fine them unless I am compelled to do so; and unless I cannot get 12 jurors to try the case. But I would make it prohibitory upon the judge to try a case unless there was a substantial number of jurors present, unless less than a tenth, say, were absent, and their absence were accounted for by illness, or in some other way. There are always some civil cases to be tried from one day to another, and I would adjourn the criminal sessions to the next day, or for two or three days, and I would send out the police and bring in the absentees, or take some very strong measure, by attachment or otherwise, to compel their attendance.

3078. In that way you would have a better chance of getting good juries?
Yes;

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Yes; at present we get the remnant of those that object to pay the 20*s.* or 40*s.* fine. All the others, who do not care about a fine of 2*l.*, or 3*l.*, or 5*l.*, go away, and, consequently, the worst jurors are left. I have had great experience in France; I have been present at a great many trials there, and, in the absence of one single juror out of the 36 whom they call, the trial cannot go on. It is a most efficient way of enforcing the attendance, because jurors know that the trial cannot go on, and that the penalty is very great, and that public opinion will be against those who absent themselves. I might as well absent myself on some trifling excuse from sitting as chairman.

3079. *Chairman.*] Your point is, that the mere imposition of a fine, if it even was a considerable fine, would not always be successful in ensuring the presence of these men?

Of course, the higher the fine the more likely it would be to ensure their attendance.

3080. But if the case was one which attracted a great deal of public attention, one around which there was a good deal of odium, would you find ordinary jurors submitting to a stiff fine sooner than attend?

You would.

3081. Lord *Inchiquin.*] Even if the fine were as high as 20*l.* or 30*l.*?

Yes; that is to say, in agrarian cases, and other serious cases.

3082. *Lord Privy Seal.*] Supposing that such suggestions as yours were adopted, would you then trust to the probability of the presence of a fair proportion of the higher class of jurors in the jury box, or would you think it necessary to require absolutely, by law, that there should be a certain proportion of special jurors on the common jury, as we understand is the case in Scotland?

I have not considered that point; but I think that would be drawing too hard-and-fast a line.

3083. Do you think that the object might be attained without having recourse to that requirement?

The object might be attained in the manner which I suggest, because it would be very hard to fix upon a line. You might fix the number at three, but three might not be enough. For instance, I hold in my hand the panel of the county of Clare, and I am quite sure that if the whole of the panel were called, and they all attended, a very fair jury could be found. You might get a better jury by not having a hard-and-fast line.

3084. And you might have a worse?

Not in the way which I suggest, viz., that 95 out of 100 should attend. Why should not the whole of them attend?

3085. Lord *Monck.*] In regard to what the Lord Privy Seal has said, your principle, as I understand, is that you would insist upon the attendance of the whole panel?

Substantially.

3086. Except those who could give valid excuses?

Yes.

3087. If the panel were constructed upon the principle of the Scotch jury, that is to say, one-third special jurors and the other two-thirds common jurors, your principle would ensure the attendance both of the special jurors and of the common jurors?

It would. At present there are in Clare 1,080 common jurors, and 250 special jurors, so that about one-fourth are special jurors. I would have them all drawn by lots, because the chances are that that proportion would come out. I do not see the use of having a case tried by the grand jury; it is a mere form that is gone through. The case is thoroughly investigated by the magistrates, and by the Attorney General, and the Crown Prosecutor, previously to the case being sent for trial.

3088. *Lord*

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3088. *Lord Privy Seal.*] Do you apply that to the assizes, as well as to sessions?

I apply it to both. In Galway, they summon, I believe, not only 23, but 60 or 80 grand jurors. Lord Ardilaun will correct me if I am wrong; he has seen the list; they summon a very large number on the grand jury in the county of Galway; more than in Munster. As a general rule, the gentlemen summoned on the grand jury are not bound to attend the common juries, and do not attend, practically.

3089. But they are bound to attend, are they not?

Those who serve on the grand jury cannot attend, for the following reason: there is no absolute legal disqualification which prevents a grand juror from being on the common jury; but if he has been on the grand jury which has found the bill, he is objected to by the prisoner, on the ground that he is not impartial, having heard one side of the case.

3090. Lord *Inchiquin.*] But there is nothing to prevent a person summoned as a grand juror from serving on the common jury?

There is not. At present a juror who is summoned on the grand jury, or on the special jury, is relieved from attendance on the common jury; I would reverse this, and direct that any juror summoned on the common jury should not be permitted to attend on the grand jury, or on the special jury; this would ensure a certain number of good jurors upon the common juries; at least it would ensure the proportion which the entire number of special jurors bears to that of the common jurors.

3091. *Lord Privy Seal.*] With regard to the jurisdiction of the magistrates, how far does their discretion extend now, as to hearing or not hearing a case summarily?

There is a certain class of cases which they cannot deal with summarily, but I have not considered that point exactly. The question never arises, practically, because any serious offence they send on for trial at once. In larceny cases they have no jurisdiction at all. Wherever there is grievous bodily harm, I think, they are obliged to send it to trial. But I would make it obligatory upon them to try any case which they were not obliged to send on for trial; I would not give them any discretion.

3092. That would require legislation, I suppose?

That would require legislation. The Government do not like to interfere with magistrates, and very properly so; but I think that, even without legislation, if the Government were to press them a little to try these cases themselves, there are a great many cases they might try which they do not try at present. I am not blaming them, because I think it is their view that it is more constitutional to send the cases for trial, and resident magistrates send them, I think, quite as much as the others do.

3093. Have you a clear opinion as to any offences which the magistrates cannot now deal with, and which you think they ought to be able to try?

No, I have not looked at that lately. I am inclined to think that wherever there is a serious assault, or grievous bodily harm, they ought not to have any power to deal with it.

3094. Can they deal, for instance, with a case of riotous assemblage?

Certainly; I think so. They could not deal with some misdemeanours, such as conspiracy.

3095. Lord *Inchiquin.*] If you reduced the number of jurors in the county to about 500, have you any idea how often a juror would have to serve?

They have to serve now about once a year. There are 1,080 jurors, and, I think, 200 have to attend at each quarter sessions, and 200 at each assizes.

3096. They would have to attend then, in future, twice a year?

No, because I have suggested already in my evidence a mode by which the

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number of jurors required can be considerably diminished. The criminal cases should only be tried four times a year, viz., at two assizes and two sessions.

3097. Your plan involves a very important alteration in the law, does it not?

I assure you that it does not, in one respect. For instance, that plan of abolishing the criminal sessions, except at the county town, could be done by the Privy Council now. The difficulty in doing it is this: there is a great local feeling among the publicans, and other inhabitants of the small towns, and among the local attorneys; they like to have the criminal sessions; it brings money into the town; and there would be local interest used at once with the Government, and the Privy Council do not like to interfere in a matter of that kind, where there is a local feeling against it; so that, I think, it ought to be the subject of legislation. I think, throughout Ireland, the advantages of trying cases locally do not counterbalance the disadvantages of having the local trial. I think the fact of having a trial by a jury of the whole county is an enormous advantage.

3098. Do you think that if you raised the qualification of the jurors to the extent that you have suggested, that would give you, at the present time, or even supposing this agitation to be at an end, do you think it would even then give you a satisfactory jury?

I think so. I cannot tell what would be the effect of it exactly, but it would certainly be a great improvement upon the present system. The test of a man's qualification is his income, or if I could get any other test, that of education, for instance, I would apply it. I would take in everybody who was educated and qualified by intelligence and position to serve on the jury.

3099. You think that the present jurors in Clare are not intelligent enough to appreciate evidence?

I do not think they are. They are very intelligent in many matters, and they are most respectable in ordinary matters of life.

3100. In larceny cases, and such like cases, they are intelligent enough, but when it comes to land cases, or assault cases, where they are prejudiced, they are singularly unintelligent?

There are a variety of causes. In the first place, there is intimidation. The higher you get, the less likely is intimidation to affect them. They have their prejudices, which it is not possible to overcome. I will not say that they are not intelligent enough in their ordinary dealings in life, but their minds are not sufficiently trained for the delicate discrimination and weighing of evidence.

3101. You said you thought that, for the present, trial by jury should be suspended; but I think you did not explain what you proposed to do in that event?

I certainly would take that extreme step in a certain class of cases, because I think the jury system is paralysed, and has completely broken down under this great excitement, which never could have been foreseen.

3102. You would not suggest trying such special cases as those which have been mentioned by a commission of judges?

I would, by judges of some kind; for instance, I think a very good tribunal would be two judges of the superior courts, or one judge, and two Queen's counsel or two chairmen. I do not think that any one judge would like the responsibility (at least I should not); and in a case of a very serious nature, you would like to have somebody to assist you. I think that it would be a good thing to take a resident magistrate or two from another county to assist the chairman; I do not see why two judges of assize would not be a very good tribunal in special cases. I have reason to believe that the people themselves have confidence in the decisions of the judges.

3103. You think that they would have confidence in such a tribunal?

I think that they now have perfect confidence in the impartiality of the judges, both of the superior and of the inferior courts. Speaking of the body to which

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which I belong, it is, perhaps, fair enough for me to say that I think the people believe that we decide the cases purely and impartially upon the evidence which comes before us, without being influenced in any way. The proof of this is, that I try 4,000 or 5,000 civil cases every year in Clare, about 1,200 or 1,500 at each sessions; a great number of these are cases in which the parties have power to call for a jury: but I suppose I have not had 12 cases in which a jury has been called for during the many years I have been chairman. That shows that the suitors on the civil side have confidence in our decisions, and I am perfectly certain that they would have the same confidence in our decisions without a jury in Crown cases.

3104. You suggest that the Attorney General should have power to order a change of venue, or, if he thought fit, to call for a special jury panel to try particular cases; would you not add to that the suggestion that he should have the power of recommending that a case should be tried before a commission of two judges?

Certainly; I said so. It is more a matter for him than for the courts, because there are a number of matters which the Attorney General knows privately; for instance, the local causes of the agitation in particular districts, which could not be stated on affidavit in the Court of Queen's Bench.

3105. You think that he should have the power of suggesting either of those three courses?

Yes.

3106. With regard to the summary jurisdiction of magistrates, it has appeared to me that appeals are very frequent if the magistrates give beyond a certain amount of punishment; I do not know whether you have found it to be the case that there is generally an appeal if the magistrates give anything like an adequate punishment?

I have not had many appeals; I have not had more than one or two at each sessions.

3107. Do you not think that it would be advisable that if you increased the jurisdiction of the magistrates, you should also alter the power of appeal?

I would give an appeal in every case.

3108. If you increased the summary jurisdiction of the magistrates, do you not think that it would be advisable to limit the power of appeal; that is to say, if the magistrates give more than a month's imprisonment, the prisoner can appeal; do you not think that it would be advisable, if you increased their jurisdiction, that you should limit the power of appeal, say to the case of a sentence of two months' imprisonment?

No, I would leave it as it is, and give the power of appeal in every case, except in very trifling cases. But I am of opinion that there ought to be an appeal in every criminal case in every court, even from the verdict of a jury.

3109. With regard to the attendance of magistrates, have you heard much complaint about that in the county of Clare?

No, I cannot say that I have.

3110. There is a difficulty, of course, in out-of-the-way districts, in getting magistrates to attend?

Yes, when I made the observation, that sometimes there was a difficulty in getting magistrates, I meant generally in Ireland. The magistrates who take upon themselves the duties of magistrates ought to resign, if they are not able or willing to attend.

3111. If you increased the jurisdiction of the magistrates, would you make it a *sine quâ non* that there should be one or two resident magistrates sitting on the bench?

I have already stated that I would.

3112. Lord *Ardilaun*.] There has been a good deal said about the magistrates sending on cases which they should themselves decide; I understood you to say that the stipendiary magistrates fall into the same error to a great extent?

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They do. I do not say that it is an error; they may be right, but I differ from them.

3113. And you think that, before the present state of agitation in the country, they acted in the same way?
I think that there is too strong an impression amongst the magistrates that almost every accused person is entitled to a trial by jury?

3114. But do you think it is worse now than it was?
I do.

3115. Are you aware that magistrates have been of late threatened for their fining, and that there are magistrates who are now under police protection in consequence.
I hear a great deal, but I do not like to give evidence of things that I have only heard.

3116. You are a landowner in the county of Galway, adjoining Roscommon, I think.
Yes, not very far.

3117. You have heard, I daresay, that Mr. Young's murder was attributed to a case which he decided in court?
I have heard so.

3118. I daresay you have also heard that Lord Mountmorres' murder was attributed to a similar reason?
I think I have heard so.

3119. Lord *Monck.*] Did I correctly understand you to say that you were in favour of enlarging the jurisdiction of the magistrates at petty sessions, and allowing them to convict and to give punishment to a greater extent than they do at present?
I am in favour of their deciding more cases than they do at present. For instance, I am in favour of their deciding all larceny cases up to 10*l.*, and also, I think, I would compel them to decide other cases, instead of leaving them the option of sending the case to a jury. I think there ought to be certain classes of offences defined which they would be bound to try summarily; I am not prepared at this moment to draw up an exact definition, but it would be easy to define the class of offences, and I would give them jurisdiction to inflict a penalty of three months' imprisonment in every case. At present they have only a jurisdiction in some cases to the extent of giving two months' imprisonment.

3120. And you would compel them to try such cases.
I would.

3121. You stated also, did you not, that you would give an appeal in every case.
I would, unless it were a very trifling case.

3122. Would not the effect of that be, in every case where there was an appeal, to transfer the trial from the petty sessional court to the quarter sessional court?
It would be before me, it would not be before a jury.

3123. What I want to find out is, how you better the thing by that?
Because it would not go before a jury, by whom the prisoner would be acquitted, in any case where local feeling prevails.

3124–5. You mean that the appeal would be to you, yourself.
To me, myself. All the appeals now from the magistrates are to myself; that is to say, to myself, with all the magistrates who have not served in the court below; but practically it is to me, because the magistrates never substantially interfere.

3126–7. Lord *Inchiquin.*] With regard to your recommendation as to doing away

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away with the power of magistrates sitting at quarter sessions, I understand you to recommend that magistrates should no longer be empowered to sit with the chairman at quarter sessions in criminal cases?

I would not relieve them from serving as jurors on the ground that they are judges, when they never practically act as judges. The magistrates are of the greatest possible use to me when they do attend, and I am most anxious to have their assistance, and I consult them about the punishment; they look in for five minutes, perhaps, but practically they do not attend. There are 140 magistrates in Clare, and they never sit with me, with the exception of two or three. I am very glad to see them always, because they assist me very much; but I think they would be more useful as jurors than as judges in my court.

The Witness is directed to withdraw.

NOTE by Mr. *Kelly* (allowed by the Committee to be added to his Evidence).

I wish to add, that in addition to the verdicts of "guilty" and "not guilty," the jury might, with advantage, be empowered to find a verdict of "non proven" in cases where the evidence, though insufficient to justify a conviction, affords a strong presumption of guilt.

The number of jurors required in each county might be considerably diminished by reducing the number of jurors on a jury from 12 to nine, or even six.

It is also right that I should add that the failure of justice in criminal cases is not, in my opinion, solely attributable to the defects in the present jury system; it is also, in a great measure, to be attributed to the defects in the criminal procedure in Ireland, which requires a thorough reform from the arrest of the accused up to his conviction or acquittal; and also to the unwillingness of witnesses to give evidence, either from terror or from sympathy with the accused.

MR. WILLIAM D'ARCY DOWLING, is called in; and Examined, as follows:

3128. *Chairman.*] You are a practising Solicitor, are you not?
I am.

3129. And your practice has extended over a long term of years?
Fifty years.

3130. In what counties?
In the counties of Westmeath and King's County.

3131. You have had a large experience of the trial of criminals in those counties, have you not?
Yes, my whole professional life has been devoted to local litigation, and I have been very much engaged for prisoners in the two counties during the last 40 years.

3132. Has your practice been principally a defending practice?
It has been a defending practice in almost every instance.

3133. Are you able to point to any remarkable differences between the operation of the present jury laws and the old unamended law prior to 1871?
Yes, I have had experience of both. I have defended prisoners under both Acts, and I thought that under the first Jury Act, that is to say, the Act which came into operation in January 1834 (which we call in Ireland the Sheriffs' Act), parties in the interest of prisoners had not the same chance of procuring verdicts as they have under the present system.

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3134. How did that come to pass?

That resulted, I think, from this; the class of jurors, both in King's County and Westmeath, are, in many instances, of a very humble class, not at all intelligent, nor suited for such a duty. As an instance in support of my views, I remember two cases under the present Act in which the foremen of two juries at different times could not sign their names because they could not write.

3135. In what year was that?

That is about four years ago. Under the old Act there is a very remarkable case. I think I defended the first of all the Fenian people who were tried, a man of the name of Vagan O'Leary. He was arrested and tried at the assizes at Mullingar seven or eight or nine years ago. He was tried for endeavouring to seduce soldiers from their allegiance in Athlone. I was not originally consulted, but some gentleman came from Dublin, and came over to me thinking that I understood the jury panel, and what it was composed of, and that I could probably feel their pulse better than he as a stranger could. He gave me a considerable fee for the purpose of looking at the jury panel and watching it during the progress of the calling of the jury list. I asked him what he wanted me to do as a consideration for my fee. He said, "If there is any rebellious ill-conditioned person in this part of the county that you know of, try and reach him and 'pitchfork' him into the jury box." That was exactly what the Fenian gentleman instructed me to do. Not being a Fenian myself, and not knowing very much practically about Fenianism, I said, "I will see what the report is about people; I think there are people on the jury panel who are very suspicious characters, and I will see whether we can reach them." The jury panel was called, and I was managing to challenge this party and that party with the intention of reaching this particular man; and I did reach this particular man, and he got into the jury box, and the jury disagreed, there being one dissentient, and that was the gentleman whom I pitchforked into the jury box, and Vagan O'Leary got off. He was tried and convicted afterwards, and was transported for life; but I had nothing to say to that at all.

3136. *Lord Privy Seal.*] That was at a time when he had not the benefit of your assistance?

I was away in some other part of the country at that time.

3137. *Chairman.*] You have described the *modus operandi* in a case of that sort; what you wish to convey to us is, that such a course was possible under the present law, but would not have been possible under the old law?

Under the present law I think the prisoner has a right, in ordinary cases of misdemeanour, to challenge six of the jury. In cases of felony the prisoner has the power of challenging 20 peremptorily, and as many more as he can show cause for. The literal fact is, that there need hardly be a challenge of six upon the present jury panel, because you are sure to have five or six people upon the jury who will never agree to anything. I will give you instances of it. We had at the assizes which have just ended at Tullamore, in King's County, two cases of assault arising out of threats to life. Under the present excited state of things in our part of the world, I was not surprised that results of that sort might occur. Four cases followed in succession. At the quarter sessions which immediately preceded the assizes, there were two cases of a similar character, and two similar results. Then the assizes came on, and there were two cases, both of which were cases of assault arising out of a threat to life; and the jury in one case acquitted the prisoner, and in the other case they disagreed. Those were two of the plainest cases that I ever, in my life, saw or heard presented to a jury. Men of ordinary intelligence could not have hesitated for one moment in finding a verdict the right way.

3138. Do these miscarriages of justice occur in cases of all descriptions, or only in a particular class of cases?

Only in a particular class of cases. In the event of larceny, and in the event of sheep stealing and other matters of that nature, the farmers sitting in the jury box always take care to find them guilty, and they do it like men. But in these cases they never do it.

3139. Will

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3139. Will you tell us whether that state of things has been particularly observable of late, or whether it is one which may be regarded as chronic in that part of Ireland with which you are familiar?

Of course latterly, from the excited state of the country, you perceive it more, because you anxiously look after the results in cases of excitement to see how people conduct themselves; but I think that there was a little of it all through under this Act.

3140. And you attribute that to the fact that the jurors under the present law are, I think you used the expression, of a very humble and unintelligent class?

So I think.

3141. And, consequently, they are connected in many cases very closely with the class to which the accused person belongs?

I can say of the cases that I saw at the assizes, and at the quarter sessions, that I am sure that the parties charged there came from the very same class of people as those who sat in the jury box. The people charged were charged with assaults, and in Ireland they draw very wide distinctions between what they call crimes against the law, and what they call "dirty crimes;" that is to say, larceny and robbery. In my locality they always call anything that is against the law a "clean crime," that is the observation which they use.

3142. That rather points to the conclusion that there is a part of the law in which the people acquiesce, and another part which is repugnant to them, and which, consequently, they are reluctant to enforce?

Quite so; I remember a case of a very aggravated description, which occurred a great number of years ago. Sir Robert Lynch Bloss, of Mayo, a gentleman of fortune, had a property which lay very much upon the banks of the Shannon, and just across it there were some very notorious characters, then called "Terry-Alts" (they change their names as the chameleon changes its colour), who came across and nearly murdered Sir Robert Bloss' land bailiff. The parties were taken up for it, and committed for trial, and they sent for me for the purpose of defending them. I did not live in the town in which the assizes were held then, and I went over three or four days before the assizes, having had at that time 60 or 70 cases of outrages at one assizes. That is rather a formidable thing to look at, but it is the truth. I was surprised when I was preparing my defence to see a gentleman walk into where I was sitting, a respectable-looking man, whom I thought I had never seen before. He sat down and he introduced the names of the fellows that were committed for trial, and I was quite surprised at the great interest he felt about them. He helped me to frame a defence for them; I still did not know anything about him; he stood up to go away, after remaining nearly an hour with me, and I thanked him, and he walked out. The trial took place, I think, on a Wednesday, about two days afterwards, and the jury was called, and to my utter surprise the first man that was sworn upon this jury was that man who had been in the room with me. He is now dead. Of course it was not my business, in any shape, to intermeddle with it, but he was there. The parties were convicted, and they were convicted under the most peculiar circumstances. The case was sent to the jury on Saturday evening rather late, and a verdict could not be received until Monday morning. This man who came into me was a man of very intemperate habits, and at this time the juries when they retired to consider their verdicts, had access to wine and whiskey, and every sort of stimulant. They got a lot of it upon the Sunday, and they managed to make this intemperate fellow so thoroughly drunk that on Monday morning, when they came to hand their verdict in, one stood on each side of him, and they walked him into the place where the issue paper was handed down, and he was in such a state that he could neither assent to, nor dissent from, the verdict. The verdict was a verdict of guilty, and a plainer case never was presented to a jury, although I was concerned for the prisoners at that time. They were transported for life, and most justly.

3143. I suppose we may take it from you that it would be very desirable to attract into the jury box persons of a somewhat superior class?

Clearly.

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3144. You were in the room just now when Mr. Kelly gave his evidence, and perhaps it will save your time and the time of the Committee, if I ask you, generally, whether you concur in the opinions which he expressed as to the desirability of taking every possible step, in order to obtain upon the jury the services of a greater number of more intelligent and better qualified persons?

I agree very much with Mr. Kelly in the desirability of what he suggested; but the difficulty is in attaining it. I have had a very considerable experience in different counties in magisterial inquiries where they exercise a summary jurisdiction for the past 25 or 30 years.

3145. Have you observed a great variety in the manner in which local benches deal with these cases?

A very decided difference. I go to different places, and I find that some of them certainly deal with cases in a very extraordinary manner. However, I myself, think that the introduction of the resident magistrates in Ireland one of the greatest boons that we have got in that country in connection with summary jurisdiction, is in sending resident magistrates to the different benches, because, though sometimes they do not seem to enter very much into the case that is going on, still I remark that the benches are always guided by them. They are generally men of sagacity and some legal training.

3146. And their decisions inspire an amount of confidence which decisions of the local bench might not inspire?

They do. I know instances in which parties who were not anxious to have the bench constituted by the local authorities, have sent memorials to the Government for the purpose of getting resident magistrates sent down to hold the inquiry, being dissatisfied with the bench as locally constituted.

3147. The resident magistrate, I presume, if his district is a large one, is very often unable to attend sessions?

They generally arrange so as to take one session after another. In isolated instances there may be cases in which a magistrate cannot attend two sessions, if the two sessions come on at the same time; but that very seldom occurs in the three counties that I know, which are King's County, Queen's County, and Westmeath. There was one thing which Mr. Kelly, I think, forgot for the moment, that magistrates had only jurisdiction in assault cases to the extent of giving two months' imprisonment, or in cases of assault upon women, six months.

3148. Could you give us any information as to the class of cases which the magistrates have at present no jurisdiction to deal with, and which it might be desirable that they should be allowed to deal with?

The impression prevails through all the counties that I know anything about, that where the slightest pretext of title of any kind, no matter how insignificant, is involved, it ties their hands up, and they cannot interfere. That is a most ridiculous idea which sometimes suggests itself. Supposing that there is an ordinary case of trespass; if a party comes and gets anybody to state that he has the right to do the act complained of, they send the case for trial.

3149. A paltry dispute about turbary, for instance?

The most paltry and insignificant cases.

3150. Do the magistrates refuse to deal with those cases on the ground that they cannot legally deal with them, or on the ground that it is inexpedient that they should touch questions of title?

I think it is under the impression that they have no jurisdiction.

3151. Are there any cases arising out of the riots, for instance, which magistrates are not now allowed to deal with, and which it would be desirable to allow them to deal with?

I do not know whether I am well informed in point of law, but I believe that magistrates have no summary jurisdiction in cases of riot; it is one of the excepted cases, I think. They can investigate a case of riot, and send it for trial by a superior tribunal, but they have no power to try it.

3152. Would a case, for instance, where there was a public demonstration resulting

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resulting in a certain amount of disorder in the streets, obstruction of thoroughfares, and so on, be a case which the magistrate could not deal with?

Since this excitement has prevailed in Ireland, the magistrates deal with cases of that kind by binding the parties over to keep the peace. That is the only extent to which they have interfered.

3153. But the culprit in that case escapes without any punishment?

He escapes without any punishment save the payment of the costs of the proceedings, whatever they were, the mere outlay to the Crown.

3154. Are there any other points upon which you would like to make any suggestion to the Committee?

Mr. Kelly talked of the right of appeal; I think that is a most admirable thing, and that in every case in which the magistrates exercise a summary jurisdiction, there should be a right of appeal, no matter what the amount is, because you have no right of appeal unless the imprisonment is over a month, and unless the fine exceeds 20 *s.* Whether the jurisdiction was increased, or whether it was left as it is, I think it would be one of the finest things in the world to let a man have an appeal, because if he wants to satisfy himself through his pocket, I should let him do it, and if he does not succeed, he pays the penalty for it.

3155. And in that case, as was pointed out, I think by Lord Monck, the appeal is to the chairman, and the trial takes place without a jury?

Yes, that is so.

3156. Is there any other observation that you would like to make?

No, not that I remember.

3157. *Lord President.*] When did that case happen to which you referred, where one of the jury came to you before the trial, when you were getting up the defence?

That is, I suppose, nearly 30 years ago. It was not under the present system; it was under what we called the old sheriff law.

3158. As I understand you, the people seem to have a legal code of their own, and they are very glad when that code agrees with the laws of the country to act according to the law of the country; but where it differs, then they take the law into their own hands?

Yes, they are very much under the impression that they ought to have a code of their own, and they try to get it up and enforce it; but, in some instances, they fail.

3159. But in "dirty crimes," as you call them, they are very glad to avail themselves of the ordinary law?

Yes, they at once return a verdict of guilty in the case of a sheep stealer, or a man of that sort, in a case which affects their own pocket in any way.

3160. That has always been the case, I suppose?

It has always been the case as long as I remember.

3161. Have the juries at all improved in intelligence of late years?

I have seen the whole working of the Act from 1871 up to the present time, and the other Act I saw the working of from 1834 up to the time of the new Act coming into operation, and I do not see any improvement whatever. When I speak of the interest of the prisoners, I mean it in this way; that the juries are of a very inferior description, contrasted with what they were under the old sheriff system. That is my positive opinion, and I have had great experience of it.

3162. Are you of opinion that you could go back to the old system?

I found that, as far as the defence of the prisoners was concerned, it was not so conducive to the advantage of the prisoner as the present system.

3163. But speaking of your general view in the interests of society, and not as defending prisoners, which of the two systems do you think is to be preferred?

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I would much sooner have the old Sheriffs Act than the present one.

3164. Do you think that it gave satisfaction?
I think it gave more satisfaction than the present Act; such extraordinary people are placed in the jury box sometimes, that the really respectable jurors on the panel almost refuse to go into the box with those people. They have often told me themselves that they could not think of retiring to consider a verdict with a lot of men with such a want of ordinary intelligence and unsuitable position, which they showed when they got inside by their conduct and observations and threats, and a variety of things of that sort.

3165. I understand that in your experience the public are satisfied with the resident magistrates?
I think they are very much satisfied with them.

3166. And they prefer them to the ordinary magistrates?
They prefer to have a mixture of the two. I should be very sorry to say a word against our local magistrates, but the people seem to think, for what reason I know not, that it is much better to have a resident magistrate amongst the local magistrates than for the local magistrates to sit alone.

3167. *Chairman.*] I think I forgot to ask you whether you were aware of cases in which the jurors were canvassed before the case came on for trial; is that a common thing?
Yes, I have no doubt in the world about it; there is the panel, and seeing a number of names upon it; you expect the first number called to be put into the jury box, and I know that it is a very common practice to canvass jurors for a trial of that nature; there is no denying it; the people understand it quite well.

3168. Your evidence, I think, on the whole, comes to this: that in a particular class of case, however conclusive the evidence might be, you would not have any confidence that a jury would find a verdict in accordance with that evidence?
Exactly so. I know it because I saw the cases; I was mixed up with them, and I know the results.

3169. *Lord President.*] But I suppose that no one at present could get a visit from one of the jury as you did in the case of this man of whom you spoke who got drunk?
I do not know how he happened to be on the jury panel. I did not know what his name was, or that he was on the panel; however, I saw him in the jury-box. He died about 10 years ago.

3170. Lord *Monck.*] Do not you think that on that occasion it was gross negligence on the part of the Crown not to make that juror stand by.
I do not know; I had nothing to say to it.

3171. *Chairman.*] Have you had any experience of special juries struck under the old system?
Not very much, because it was only in the superior courts such knowledge could be acquired, and I localise; I live in the provinces, and I never interfere in cases of that sort.

3172. Lord *Monck.*] You heard Mr. Kelly just now make a proposal that attendance should be compulsory on every man on the panel, unless he could give a good excuse for being absent?
It is so now.

3173. But it depends upon the judge's discretion as to fining him, whereas Mr. Kelly would make it absolutely compulsory: do you think that that would be a good plan?
Some discretion should be given to the judge. They are liable when they are called, and do not attend, to a penalty of 2 *l.*

3174. That is discretionary; but Mr. Kelly's proposition is to make it compulsory?

The

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The party might have a very good reason why the fine should not be imposed.

3175. It has been proposed that if he had a good answer he should be excused, but that he should be obliged to give, for not attending, a reason which the judge should consider valid, and that otherwise the judge should fine him; would you approve of that proposal?

Yes, that would be a very good plan.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, at Twelve o'clock.

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Die Martis, 19° *Julii*, 1881.

LORDS PRESENT:

Lord President.	Lord Tyrone.
Lord Privy Seal.	Lord Inchiquin.
Duke of Marlborough.	Lord Penzance.
Earl of Derby.	Lord Emly.
Viscount Hutchinson.	Lord Ardilaun.

The MARQUESS of LANSDOWNE, in the Chair.

Mr. CLIFFORD LLOYD, is called in; and Examined, as follows:

3176. *Chairman.*] I believe you are a resident Magistrate, at present acting at Kilmallock?
I am.

3177. And you have had magisterial experience at quarter sessions in the counties of Down, Belfast, Antrim, and Longford?
I have.

3178. In what counties is your district situated?
The present Kilmallock district is on the borders of Cork and Limerick.

3179. Will you state to the Committee your impression with regard to the way in which juries have been discharging their duties during the last few months?
My experience of them is that they could not discharge them worse; they do not discharge them at all in many parts of the country.

3180. Has that been peculiar to the last few months?
It is peculiar, I should say, certainly to the last few months and to such times as the present, that is to say, times of popular agitation. I mean, for instance, that the juries in Ireland, in my experience, which, of course, is somewhat limited, perform their duties certainly well in times of peace, and in ordinary cases of crime; but where crime is connected with any popular movement, or agitation, or revolution, as it may be called, they seem to me to utterly fail.

3181. Is it the case that of the crime which comes within your cognisance the larger part is crime of an agrarian character?
We will call it agrarian, that is of crime now prevalent.

3182. Directly or indirectly connected with land?
Yes, I think it goes deeper, but still we will call it agrarian crime; agrarian or political.

3183. And you state that with regard to that class of crime you find that the juries are not to be depended upon?
Certainly not, I think.

3184. Have you formed that opinion, more particularly with regard to the juries in the district with which you are now connected, or has that been your impression in past years?
I cannot

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I cannot say that I have had personal experience of juries in the district in which I am now; I have been only there for two months. Naturally, I take every opportunity of observing and reading, but I principally form my impression from the last time I was in Longford. We had considerable agitation at the time, and I was at the assizes and sat at the quarter sessions, but of course I have conversed and read a good deal on the subject in the papers.

3185. We have reason to believe that in many cases the impossibility of obtaining the conviction of an accused person is due to the difficulty of obtaining evidence in the disturbed districts; do we rightly understand you to say that even where evidence is forthcoming the juries do not find verdicts in accordance with it?

The difficulty is sometimes in obtaining evidence. At other times when evidence is obtained the witnesses go back upon what they have said, and do not give their evidence in a truthful manner. Again, when they do give their evidence, when the facts are so clear, as, for instance, when people are caught red handed by the police, even in those cases I have known juries refuse absolutely to convict.

3186. To what cause do you attribute this misconduct on the part of the juries?

Unquestionably to fear and intimidation; to innate fear, to begin with, resulting from the general state of the country, and often to actual personal intimidation.

3187. By innate fear, do you mean what one might call moral cowardice on the part of the jurors?

No, I mean fear resulting from what they see going on around them. For instance, if a farmer knows that another farmer living near him happened to offend against the popular cause, as it is called, and had his house attacked at night, if he went on a jury he would, from the fear resulting from the treatment of others, be afraid to speak out himself, or to give any offence to what he calls the national cause.

3188. Then I understand that you attribute it rather to causes of that kind than to actual sympathy with crime on the part of members of the jury?

Yes, I do. I have a very decided opinion upon that subject. My experience of the farmers of Ireland is, that in many parts they do not sympathise with the present crime; that is to say, the respectable men in the country. They, of course, sympathise with what will put money into their pockets, and prevent their paying their rents; but that is a different matter from serious crime.

3189. Have you ever been aware of cases in which personal pressure has been put upon individual jurymen to induce them to find a particular verdict?

I have; I know, I might say, of more than one case; but at one particular assizes the jurymen were visited from house to house; there was a house to house visitation by so-called members of the Land League, I believe.

3190. Do you find that in cases of that kind the whole of the jury panel, or only a few individuals, have been corrupted in this manner?

The result is the same. I have been led to believe that often on jurymen retiring to consider their verdict the anxiety is not as to the first man who will open up a discussion as to the guilt or innocence of the accused, but the anxiety from what I have gathered is, who will be the first to say that he is not guilty, and thereby get some popular credit out of doors.

3191. Then it would follow, from what you have stated, that in a district which was in this kind of condition, it would be absolutely hopeless for the prosecution to expect a verdict, no matter how strong the evidence was?

I think that in many parts of Ireland it would be absolutely hopeless; in fact, I know the Crown have even thought so on more occasions than one, when people have been actually caught red-handed in the act, and there was no question

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tion about it. They have pressed me, in one case, to send people to trial, which I did not wish to do, knowing what would be the result; and then when the case came for trial, going over the jury panel with the officers, who knew who the people were, they saw that it was hopeless, and they could not put their finger upon four men who would give an honest verdict: and they accepted their plea of guilty, and they let them out altogether upon their own recognisances. That was a case in which they had pressed me very strongly against my wishes to send the case for trial, showing what the Crown thought of the importance of the case.

3192. From what class in society are those jurors usually drawn?

There you touch upon ground that I am not so well acquainted with; it hardly comes within my province; but I should decidedly say that they are from the respectable class of farmers, so far as I am able to judge by appearance and observation.

3193. You have referred particularly to a certain class of cases in regard to which the juries refused to do their duty; should you include, within that class, cases of assault?

It depends upon what class of assault it is; if it is assault in connection with the present revolution of the country, I have no doubt on the subject.

3194. But should you include within it ordinary cases of assault which are not so connected?

No, I do not think so at all; I think that an Irish juryman would do his duty very well in ordinary cases. In larcenies, for instance, or in cases unconnected with any popular agitation or revolutionary movement.

3195. Have you any suggestions to make to the Committee as to the steps which might be taken to prevent a miscarriage of justice, such as that which you have described?

I have thought over the matter considerably, and I have spoken of it with others; I think there is only one way out of the difficulty, and that is, for certain localities to be proclaimed by the executive, with a temporary suspension of trial by jury; I know no other possible means; I do not care how high you go, with the people left in the country you will have the same intimidation. The majority of country gentlemen are gone from disturbed districts, and the grand jurors are not liable to serve on petty juries; and when once you go below that stratum, you come upon a class who are not only liable to intimidation, but they are coerced, even people that one would expect would have the courage to be honest and truthful.

3196. Should you be inclined to say that if on every common jury there were a few persons of a class superior to the rest, better educated, more independent, and more intelligent, their presence would be likely to lead to a more effectual discharge of the duties of the jury?

I think it would lead to much more serious crime; if those people did dare to speak out their opinions, most certainly before a week was over their heads, they would know the results in the way of personal violence to themselves or their properties. If two or three people at the present moment on an intimidated jury that was determined on acquitting a prisoner were to speak up honestly on that jury, I believe the results would be very fatal to themselves.

3197. I suppose it has occurred to you, that without going the length of a measure so extreme as that which you have suggested, some of these difficulties might be overcome by removing the trial from the district in which the popular feeling was so much excited, as you have described, to some district where it was in a more normal state?

I think that such a proceeding would be open to very serious objection. The revolution in Ireland is pretty well general now, except in those counties which we may call the Protestant counties, where Orangeism has a considerable footing; it would certainly look like an unfair thing to take a so-called Nationalist, and put him up to be tried by a jury of Protestants, many of whom, no doubt, would be Orangemen; unless you did that, I do not see where you would take him to.

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3198. Is not the venue of trials very frequently changed, generally to Dublin?

Then look at the result. I admit that in Dublin you do very often get a verdict; but on the other hand, look at Parnell's case. The law could not be more clearly laid down by any judges than it was in that case; the facts could not be clearer in any case; and yet the jury deliberately acquitted him; and it was known that they would acquit him, and immediately afterwards there were demonstrations in front of the houses of the one or two men who were in favour of conviction.

3199. *Lord Privy Seal.*] There was no verdict?

They disagreed, which comes to the same thing as regards law and order.

3200. *Chairman.*] Therefore, you see no possible solution of this difficulty, except suspending altogether trial by jury?

I should not say altogether generally over the whole country; but in certain localities where the Executive see that justice is turned into a burlesque and a farce, I do not see any other way out of the difficulty than for a time suspending trial by jury.

3201. Should you limit your proposal to the trial of crimes of a particular class?

It would be very difficult to make that distinction, I should think, because after all the connection may, perhaps, only appear on the trial. If a country is in such a state that a juryman cannot be trusted to try one case, I should not trust him to try another for the time.

3202. What would you propose to substitute then for the existing machinery?

Three judges at assizes. I know of nothing else, and at quarter sessions in such districts the chairman and two resident magistrates.

3203. We have had a good deal of evidence here which points to the conclusion that, in the case of some offences, it would be desirable that increased jurisdiction should be given to the local magistrates, who would thus be empowered to deal promptly with offences of that kind?

In such times.

3204. Is that a suggestion which commends itself to your judgment?

No, I cannot say that it does. A resident magistrate has quite sufficient power to keep order in any district, but he is often hampered by the presence of local justices, who will not permit him to put the law into execution. Many of the local magistrates are now (I am sorry to say) of the class known as "popularity seekers," and I know that those gentlemen often come, and are coerced to come, with the deliberate intention to give their vote in favour of accused persons; so that in such instances a resident magistrate is only hampered. Cases have to be struck off which are very serious cases, affecting the peace of the country; but if a resident magistrate was sitting alone, I think the powers he has are sufficient.

3205. When you use the expression "coerced," do you mean that actual pressure is put upon the local magistrates?

A local magistrate told me once that he did not intend coming to court; I need not name the district, I suppose. I said to him, "I think it is fair to tell you, sir, speaking privately, that in these troublesome times I may perhaps have to administer the law in a somewhat firmer way than it has been done hitherto, with the view of restoring order. Of course, in these cases I know what the effect upon gentlemen living in the place and amongst the people is, and it is as well to tell you that beforehand, so that you may come and help me, or not, as you please;" and he decided from the state of the district at the time, and from his connection with the land, to stay away, and a very proper conclusion; it was sufficient excuse for him, at any rate. That gentleman told me afterwards that the people who were interested in a case told him that they would come to his house, and drag him to the court if he did not come. I call that very gross intimidation if a magistrate does not, for his own reasons, think fit to come and attend that the parties in connection with the case should actually threaten to drag him, a magistrate, out of his own house, and bring him to

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to the court. Of course, what could that gentleman do afterwards but come; and, giving him credit for ordinary human feelings, I cannot see what he could do but take a very lenient view of the case that was brought up. What can you expect from a magistrate who came to see me after dark, and apologised for coming to see me after dark, saying that he dared not come in the daytime? Is that a man to sit on the bench, and to administer justice fearlessly?

3206. Have you found that there is generally on the part of the local magistrates a good deal of reluctance to deal themselves with cases into which agrarian considerations enter?

The local magistrates in Ireland are formed of very different classes. I think that the upper classes of local magistrates when present in the district have shown a very proper disinclination to deal with such cases, because they are, to a certain extent, mixed up in them themselves, and, whichever way they decided, they would be accused of bias; and I have found an inclination to stay away, and, in fact, they generally do stay away. But there is a lower social class of magistrates, who I find on all occasions, when such cases are being brought up, are either brought or make a point of coming; that is to say, those magistrates who have from their trade or calling to live amongst the people. Other magistrates are principally gone at the present moment, and they are not there in many parts of Ireland. I am not speaking, of course, of the whole of Ireland.

3207. You have stated very clearly why you consider that the particular persons who now serve as local magistrates are not in all cases fit to be entrusted with increased jurisdiction in regard to these offences; but, treating it rather as an abstract question, should you be inclined to say that many of those minor offences could be best dealt with by the imposition of perhaps not a very severe punishment, but one which should be prompt and immediately imposed?

Although certain people give me the credit for punishing severely, I am not an advocate for punishment. I think that you can bring a district into order without severe punishment by asserting the law, by making people amenable to the law. I think it is often not necessary to punish them, and that punishment very often exasperates people, and leads to the very result that you do not wish to bring about. In my experience the powers of a magistrate are amply sufficient, but he must be allowed to exercise them. A resident magistrate should, however, be given a limited jurisdiction in cases of riot.

3208. What do you mean by making people amenable to the law?

Producing them before you; making them answer to the charge against them; not allowing charges to slide away and be no more heard of; not issuing in most serious indictable cases summonses to be heard a month hence, and then to come up before the petty sessions before these local magistrates, and have the case laughed out of court. I have known very serious cases brought up and simply treated as a trivial matter, and laughed out of court by local magistrates. I think that the powers of a magistrate, if they are properly exercised, are amply sufficient; he has very large powers.

3209. Then you would not like to see the power now allowed to magistrates of imposing certain punishments increased, but you would wish to see it exercised more effectually?

Certainly; when I say that I should not like to see it increased, it would do no harm, and it might do good; but I do not think there is any absolute necessity for it. In charges of riot, however, resident magistrates should be given a limited jurisdiction.

3210. *Lord Privy Seal.*] Is it your impression that magistrates are, at present, more often drawn from the lower social class of which you have spoken, than they used to be?

I cannot say. My experience of Ireland is only since 1874, but I have certainly an impression that it is so.

3211. To what class do those gentlemen belong, who you say are scarcely in a position to do their duty on the bench with full independence; are they small landowners, or are they tenant farmers?

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There are some small landowners and bankers, and millers, and that class of people, who are, in other words, dependent on the people.

3212. Do you often find yourself acting alone?
I do, if there is nothing very serious coming on. If there is something very serious coming on, I find that other magistrates are brought there.

3213. Brought there by some kind of popular pressure?
Yes. A great deal depends upon the district, naturally.

3214. I suppose the different benches which you attend vary a good deal in their quality?
At present, I cannot say that I think they do; but in the general remarks I have made I have not said that I referred to any particular bench or locality.

3215. Are we to understand that the opinions which you have expressed as regards juries apply to the present condition of things in Ireland; or do you apply them more generally?
As regards juries, I have been talking of the present or similar conditions.

3216. But do you draw a considerable distinction between the conduct of juries since the present agitation sprang up, and their conduct before that time?
I do draw a very wide distinction. As I have already said, I think that in ordinary cases of crime, my experience, and I fancy the experience of others, is that the juries as a rule (talking of criminal cases of course) do their duty fairly, as well as any juries in this country, I should say. But in cases of popular agitation, when the country is in a state of revolution, or violent excitement, they utterly fail.

3217. Do you recollect many cases of an agrarian or Fenian character, during the first years of your time as a resident magistrate, before the present condition of things began?
None. I was only appointed in 1874, and the country was quiet then, and I had the good fortune to be sent to one of the quietest counties in Ireland, the county of Down, although there were party cases occasionally.

3218. So that during that period you had no experience of agrarian cases?
Not personally.

3219. Lord *Inchiquin.*] When did you leave the county of Down?
I left Down about 1877, I think.

3220. *Lord Privy Seal.*] How did you find Down juries act in party cases?
Considering the strong feelings they have I should say that they act wonderfully well. For example, you may take as an instance the case of Mr. Johnstone, a gentleman known as Ballykilbeg Johnstone, in which the jury convicted him, although many on it must have been Orangemen, and though he was the chief Orangeman of the country. But juries in the North are inclined to modify cases sometimes; I have heard cases commented upon by the judge where, in party riots, in order, as they thought, to mitigate the offence, and to get a lesser punishment inflicted, they have brought in, for instance, verdicts of unlawful assemblage quite against the evidence and the direction of the judge. But beyond such minor points as that, I think juries in the north of Ireland do their duty conscientiously and well, even in party cases.

3221. In those cases there is nothing like the break down of the jury system which you have been describing to us?
Certainly not.

3222. *Lord President.*] I suppose that in the north the religious feeling takes the place of the agrarian feeling in the southern and western parts of Ireland?
Not to the same extent; nothing like it. It does not lead to such lamentable results either politically, socially, or commercially.

3223. You

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3223. You were at Belfast, I think, for some time?
Yes.

3224. There is a strong party feeling there at times, is there not?
There is a very strong party feeling there at times.

3225. And your remark, in answer to the Lord Privy Seal, applies there?
Certainly; I have never known a break down of the law there; I have never had to say to myself, as I have had to say lately, "I shall not commit these people for trial," even in cases in which the evidence appeared conclusive, "as it would be useless to do so."

3226. Would your remark, with regard to the influence brought to bear upon magistrates, apply to magistrates in the north, as well as to those in the other parts of the country?
I do not think so; and besides that, you have magistrates of all classes there.

3227. They are not influenced by party feeling?
No, I certainly think not, or by any other improper feeling.

3228. Have you been in any other part of Ireland as a stationary resident magistrate?
I was in Longford during the early part of this year; I was sent down on special duty, but I was there, as a matter of fact, for three or four months.

3229. Did you find that the same state of feeling prevailed there as prevails in Tipperary and Limerick now?
I do not think there was a single conviction at the assizes when I was there, although there were cases sent up which were perfectly clear.

3230 You made some remarks about the magistrates where you now are; is it the fact that there are very few resident proprietors about there?
I think I carefully abstained from saying where I am now; I did not want to particularise, and avoided doing so.

3231. But is it the fact that where you are, and where that state of things exists, there are not many resident proprietors?
There are few, if any, large proprietors now in my district.

3232. And that, I suppose, is the cause of the magistrates being sought from rather a lower class than is the case in other parts of the country?
There are resident proprietors, but they are not there at present; and in speaking of local justices I did not say I alluded to those in the Kilmallock or adjoining districts.

3233. Have you had any difficulty in the south and west as to getting evidence in cases?
The greatest difficulty.

3234. So that, even if you had a jury which would do its duty, you would very often have difficulty in bringing sufficient evidence?
Undoubtedly; people who have been actually up as witnesses of what has been done, are prepared to come up again, and absolutely deny what they have before said; and more than that, people who have laid informations at the time, before influence is brought to bear upon them, have, when the case has been brought up, refused to give evidence. In one case, a witness even said beforehand, "Such pressure has been brought to bear upon me, that when I come before the court I cannot say what I did before, and I must go back of it;" and he did go back of it, and he made a joke of the case; and in this particular case it was actually laughed out of court by some local justices, and a very serious case it was too.

3235. That, I presume, almost invariably, when there is some excitement in the country, as there has been for the last year or two?
Yes, it is these times that I have been alluding to.

3236. But I think you said that in quiet times you have not experienced that feeling among the juries?
No, I think not.

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3237. *Lord Privy Seal.*] Do you think that it would be possible, out of the existing materials, to constitute the magisterial benches in a more efficient way than they are constituted; that is to say, do you think there are many gentlemen who ought to be on the commission of the peace, and who are not?

No; I think there are many who are already on who ought not to be.

3238. But you do not think that there are neglected materials?

I do not; I think the appointments are fairly made, as a rule, as regards those who ought to be appointed; I do not think any are left out who ought to be appointed.

3239. *Lord President.*] The magistrates in the counties are appointed by the Lord Lieutenant?

Yes.

3240. You have not much experience in large towns, I believe?

Not beyond Belfast, and there they are entirely, or mostly, of one particular party, though I must add that their duties are performed most creditably and justly.

3241. You made some remarks just now, I think, which indicated that cases were not brought forward until long after they occurred; is that caused by the magistrates, or is it from the constabulary bringing up cases?

The constabulary were not supported. There cannot be a resident magistrate everywhere. Of course the number appointed were appointed for peaceful and ordinary times. At the present moment there is an immense strain; even at this very instant there are not magistrates where there ought to be. But in some serious cases the police must of course go to a local magistrate, and he may tell them that it does not matter, that there is nothing in it; and then the police get in the habit almost of giving up going and reporting cases to the magistrate, when they get no support, and when they do bring them forward; I have very often heard the police really abused for having done their honest duty, in order to gain some popularity with the populace in court. Under such circumstances you cannot of course expect policemen to be anything but fainthearted in doing their duty. I am here repeating what has been said to me by many police officers.

3242. *Lord Privy Seal.*] Do you think it would be of advantage to have a greater number of resident magistrates in Ireland?

I do, most decidedly, qualified resident magistrates.

3243. You think it would be a great advantage if there were a larger number of well-chosen magistrates?

Of well qualified resident magistrates. What I meant in saying "well qualified," instead of "well chosen," was this: I do not doubt that at the present moment his Excellency chooses the magistrates from the best materials to be got; but I think that a different system ought to be in force, which is another matter of course.

3244. *Chairman.*] You would like to see a larger number of well-chosen resident magistrates, and you would like to see them dealing with a certain number of cases which are now sent on for trial?

I do not say that. I think, as I have already stated, the powers that they have are sufficient; but I think that they are hampered in the exercise of those powers, and that if there were a larger number of resident magistrates, they would, by sometimes being able, for instance, to sit together and getting advice from one another, to overcome the weakness of the local magistrates, which they experience at times now. As regards the qualification, what I meant to say was this: that some decided qualification should be required before a man is appointed a resident magistrate. I do not think that the best soldier will do; or that the best barrister will do, if you could get him on the small salary that we get; but I think a combination of the two, for instance, in the case of a soldier who was successful in getting his name put down, it should be a *sine qua non* that the officer should, before he is appointed, obtain some knowledge of the law. A very good test would be that he should enter an Inn, not necessarily be called to the bar and waste three years of his life, but stay six months and pass his examination in certain branches of law. You would then

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then have a man appointed who had the soldier's qualifications that are necessary, and also a man who would know what he had to do, and how to do it. You may obtain a good soldier now in these troublesome times in Ireland, and with the best intentions he will not know his powers, or how to exercise them; he is helpless; everybody has his eye upon him to report him and to sue him, and to ask questions about him; he is as unqualified as if you were to take anybody haphazard and put him there. Of course in quiet times he will learn by degrees; but if he is appointed now he is appointed to be used, and he is put perhaps into some disturbed district, and he does not know what to do. He cannot know what legally constitutes the serious offences he finds being committed, or what powers the law gives him in dealing with them.

3245. Did you mean to say just now that you consider the pay insufficient?
I certainly do. For instance, the pay is 425 *l.* a year on appointment, and I think that is quite insufficient for a man if he is qualified to do his work.

3246. *Lord President.*] Does that include allowances?
Beyond this we have 108 *l.* a year for horse and stationery allowance, and in Belfast and Cork 100 *l.* a year lodging allowance; but even that for a man who makes it his profession and knows his duty (if he does not he ought to be sent away), I think is very small, considering our vast responsibilities, the great danger and anxiety that we go through, as well as the onerous nature of our duties.

3247. You spoke some time ago, I think, in answer to the Chairman, about a change of venue, and you spoke particularly of Dublin; you have experience, I suppose, of change of venue to other places under the winter assizes system?
I am not qualified to give an opinion upon that subject.

3248. Lord *Inchiquin.*] Do you not think that if you largely increased the number of resident magistrates in Ireland, the local magistrates would be less inclined than they are even at present to attend on the bench and assist in the administration of justice?
Possibly; but I should view that with considerable pleasure, myself, from a magisterial point of view.

3249. Do you not think that instead of discouraging local magistrates from attending, the right way of dealing with the subject would be to take care that you have proper men on the bench, and that the list of magistrates was more frequently revised by some authority?
No, I cannot say that I do, and it would be impracticable. I think that unqualified men vested with the powers that the magistrates are vested with in a country like Ireland are unsuited for the work.

3250. In out of the way districts there is always a difficulty, as you know, in finding local magistrates who are qualified?
Yes, but I am speaking of professional, magisterial, and not social qualifications.

3251. It frequently happens, does it not, that men who are unfitted do not show their unfitness until after they have been appointed?
True, in some points; but, in my opinion, a local magistracy at all in such a country as Ireland is a mistake.

3252. Do you not think that it would be much more advisable that some authority should revise the list of magistrates, and expunge those who were useless?
Although they might not show their special unfitness before, it may be presumed that Mr. So-and-so, a miller, knows absolutely nothing of the law or of the government of people.

3253. But do you not think that the system of the local magistracy is, that it is unnecessary for a man to know the law; he has to give his decision on the merits of the case?
That may be true, but I cannot say that I agree with it.

3254. But that is, I suppose, the idea of appointing local magistrates, who are untrained in the law?

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The local magistrates date from long before any thought of stipendiary magistrates, I believe, came into existence. They were originally country gentlemen. But the law to be administered, and the system of its administration, differs very widely now to what it did even fifty years ago. What may have been suitable then is not so now.

3255. You spoke about local magistrates generally; you are talking of Limerick and Tipperary magistrates, I suppose?
I am not speaking of particular county justices.

3256. I think you said something about the summary jurisdiction of magistrates; do you not think that it would be an advantage that the summary jurisdiction should be increased, and that the magistrate should have more power?
No, I do not.

3257. At present, in most cases, there is an appeal if you give more than a month's imprisonment, is there not?
There is.

3258. Do you not think that it would be advisable that in considering the state of the country, the magistrates should have an increased power of say, giving two months without appeal, so that they would be able to deal more severely with bad cases which came before them, instead of sending them on for trial, as they frequently do now?
I cannot say that I do. As I have already stated, I do not think it is punishment always that is wanted. The powers are very great. I may say that in Kilmallock district I do not think I have absolutely punished with imprisonment half-a-dozen men. A number have been arrested. For instance, in charges of riot, if a man knows that immediately he will be arrested, and that the magistrate is not going to be afraid of him, or of the Land League, or anybody else, but will, if necessary, remand him for a week, and tell him and his village that if they behave themselves this man will be let out on his own recognisances, and, if not, he will be dealt with more severely, that will have quite as much effect as punishing the man.

3259. You have the power of dealing with them more severely in the end?
Yes, we have the power of committing them without bail. Local justices often show an inclination to treat such cases with great leniency from the first, which, in a disturbed district, has had a bad effect.

3260. But when you have more of the upper class of magistrates, you do not find that to be the case?
Certainly not.

3261. It was proposed by some of the witnesses who have been examined here, that the Attorney General should have the power to decide in what agrarian cases he would recommend should not be sent for trial before a jury, but that they should be tried by a commission of judges; do you think that that would be an advantage?
I should think that that would be a very difficult thing to do; I should think that the less the Government interfered with it the better.

3262. I understood that you thought the jury system had so broken down that you recommended a commission of judges?
So I do.

3263. You would not altogether do away with trial by jury?
I should not myself think that that was advisable.

3264. One of the witnesses who was examined before this Committee suggested three things: one of trying men by special jury; another that the venue should be changed; and another that the cases should be tried by three judges; what do you say to those suggestions?
I would suspend trial by jury for the time in certain localities. Where the localities got so bad that the law was being turned into a farce, I should give the executive government in those places power to proclaim certain districts, and to direct that in those districts, for a certain time, trials should be by judges without a jury.

3265. You

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3265. You have been in Tipperary, I think you said, since 1877, when you left Down?
No, I was in Belfast for some time.

3266. But you have been in that part of the country for the last few years?
I was stationed in Belfast.

3267. You had not been in the Kilmallock district before these troubles began?
No, I had no personal experience of the south of Ireland before this agitation.

3268. Then, so far as your knowledge is concerned, it is entirely since this agitation began?
As far as my personal observation of the south and west is concerned, it is since the agitation began.

3269. But you had heard that trial by jury was not considered satisfactory, even before this agitation?
Yes.

3270. Your recommendation is that this suspension of trial by jury should only be for a certain time; now witnesses have come before us here, and have told us that ever since the time that Lord O'Hagan's Jury Act came in these unsatisfactory verdicts have been given; consequently it would follow, would it not, that in certain cases trial by jury should be suspended permanently?
But there is a great deal of difference of opinion upon that subject. I think that possibly in capital cases juries may in some counties have somewhat hesitated to do their duty; but in peaceful times, for my part, I have not heard that the juries are so bad as they are represented; but that would be a matter which, as I say, I am not well qualified to speak about.

3271. Earl of *Derby*.] I gather from your evidence that you consider that in agrarian cases justice cannot be had from juries?
That is my opinion at present.

3272. And that no modification in the manner in which juries are composed will be adequate as a remedy?
I think so.

3273. In short, you consider that in such cases the jury system has broken down altogether?
I think so, certainly, I must confess.

3274. You also say, I think, that the local magistrates themselves are open to intimidation?
Decidedly.

3275. I gather that the inference which you draw is, that in cases where the feelings of the people are strongly excited, it is only upon the judges or upon the resident magistrate that you can rely?
Such is my opinion.

The Witness is directed to withdraw.

MR. JAMES PAUMIER HAMILTON, Q.C., is called in; and Examined, as follows:

3276. *Chairman*.] I THINK you are Recorder of the City of Cork, and of the East Riding of the County of Cork?
I am.

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3277. Were you examined before the House of Commons Committees in 1873 and 1874 upon this subject?

I was.

3278. Will you be so good as to state generally to the Committee whether you are disposed to approve of the principles of the changes which were introduced into the Irish Jury Law by Lord O'Hagan's Act in 1871?

The Act, of course, was introduced with the best possible intentions, and with, I may also fairly say, a reasonable expectation that it would have succeeded; and, if we had a settled state of society in Ireland, I think that possibly, after a time, the Act would have done very well; but my opinion of it is that it only succeeds during our lucid intervals, and they are very few. Of course I have consulted with those persons in Ireland whom I consider capable of giving me the best information on the subject, and I received a letter from a most admirable official, which conveys my views of the Act very well, if I might be allowed to read it. I asked him to give me his opinion as to the general working of the Act, and I quite endorse his opinion. I go a little beyond him, as I will explain by-and-bye: "Immediately on the passing of Lord O'Hagan's Jurors Act in 1871, it became apparent that a great number of persons were put on the jurors' lists who were totally unacquainted with the duties and obligations of jurors. The intention, no doubt, was to educate the farmers, and by bringing them into participation in the administration of the criminal law, to show them that the law was for their own advantage; but the innovation was too great, and the result was that the jury-boxes were crowded with jurors utterly unfit, either because they were incapable, or unwilling, perhaps in some instances both, to discharge the duties; and the machine worked very badly. Afterwards the qualification in this county, at first 20 *l.* a-year, was raised to 30 *l.*, and again to 40 *l.* This appeared for a time to have worked some improvement, but its operation was uncertain and irregular. At some sessions, when a few intelligent persons got on the jury, everything was satisfactory; but at the very next sessions, probably, you find things nearly as bad as ever. Intelligent jurors were not always summoned, and when summoned" (they were obliged to summon them by mechanical routine, and in that way, of course, you could not secure intelligent jurors) "avoided, as far as possible, serving with the others, and I fear they were too often easily left off. As matters now stand, it seems very difficult to suggest a remedy. The old system of leaving the selection of the panel entirely in the hands of the sheriff, is not likely to be re-established. All, or nearly all, tenant-farmers are connected with the Land League" (that is the secret). "Those persons will follow the rules of the League rather than the law of the land, as laid down by the judges, and thus a great difficulty arises in dealing with cases of an agrarian character. If the land agitation should subside, as I trust it may, I think the raising the qualification would render the administration of the criminal law more satisfactory. It would reduce the number, but undoubtedly increase the quality of the jurors, and it appears to me to be the best (if not the only) course to recommend." I think that is a fair description of the ordinary working of the Act; but I entirely agree with Mr. Lloyd that, in many parts of Ireland now, the jury system, instead of being useful in the prevention of crime, is a direct incentive and encouragement to it.

3279. If you are to have a jury system at all, should you be inclined to say that the qualification for service on the jury must, in the main, be a rating qualification?

I cannot understand the feasibility of applying any other qualification at present. I am afraid that, in legislation, you can never go back; and although the charges against packing juries by sub-sheriffs were, in my opinion, totally unfounded, as I stated before former Committees, yet there was a violent agitation upon the subject.

3280. But looking at it as a practical question, you think that it would be impossible to revert, either to the old qualification which was in force before 1871, the leasehold and freehold qualification, or to the old system of selection at the unlimited discretion of the sheriff?

I am

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I am afraid so. One reason why I think you could not go back to the leasehold and freehold qualification is this: that in Ulster, the best part of Ireland, where the jurors do discharge their duties very fairly, the leaseholders and freeholders are very few in number; they are mainly tenants from year to year, and they positively prefer their tenancies from year to year with tenant-right to leaseholds or freeholds.

3281. Assuming that we are to have a rating qualification, do you think that the existing qualification is one which ought to be raised?

I have thought upon that subject very carefully. If you raise the existing qualification much, you have a paucity of jurors. In such a county as Leitrim, for instance, or some of the western counties, you would reduce the number so very much that I am afraid that that could not be done.

3282. To raise the qualification would render the burden of service almost intolerable to those who would be left on the list?

Yes; and I may say that the unfortunate common jurors of Ireland, with whom I am extremely familiar, do look upon it as the greatest burden that can be inflicted upon them, and I believe that, in most of the counties with which I am acquainted, they would be delighted if trial by jury was suspended to-morrow. But I was going to add that I never could see why we should insist upon the magic number of 12, as the number that must necessarily form a jury; the effect of it is very often to get 12 of the stupidest people in the whole district into the jury-box, and it is a number to whom no man in his senses would voluntarily refer anything. If you reduced the number to six (and I will state presently why I mention that number), then you could afford largely to raise the qualification, because you would only require half the number on the list to do the same work; and, unquestionably, in ordinary times you would get a better qualified jury on the rating system. The reason why I mention the number of six is this. As chairmen of Quarter Sessions, or rather County Court judges, as we are now called, we have juries of six at the option of the plaintiff or the defendant in a civil suit, and I find that that jury of six gives a much more intelligent verdict than a jury of 12, the reason being simply this: that the jury of six appear to me to have each of them a greater personal responsibility upon them; they sit close to the judge in two rows, perhaps three in a row; there is a united and undivided attention given by those men to the cases, and the judge appears to me to have more influence with that small number than he has with 12. Where you have 12 men in two rows, if you look round you will find one of them asleep, and another talking to his neighbour; and there is by no means the same amount of attention paid by the 12 as you have where you get a few together. The consequence is, I believe, that verdicts of juries, even with the present qualifications, would be more intelligent if you had only six, and you would have the additional advantage of being able very largely to raise the qualification. That is the only improvement that I can suggest with respect to juries at present.

3283. Would you state from what class the common jurors are now, as a rule, drawn?

The common jurors, for instance, in such a city as Cork, where I am Recorder, are drawn from the mercantile class; and it is impossible to find more intelligent or fairer jurors in all ordinary cases; and intimidation, that Boycotting system (because that is the most serious part of the present danger), which ruins a man in his trade, is the only element, I think, which affects such jurors as the jurors of the city of Cork.

3284. Then I understand you to say, that although the Cork jurors are drawn from the mercantile classes, they are nevertheless subject to the same intimidation, and they are influenced by that intimidation?

There is not the slightest doubt of it. That is universal.

3285 Is that intimidation exercised in respect of a particular class of case only, or generally?

In respect of agrarian cases, or cases involving something that they think has a political aspect. I have, as Recorder of Cork, a jurisdiction confined to the

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city; and then as chairman of the East Riding of the county, I have a jurisdiction spreading over the whole of the East Riding. The county jurors are by no means so intelligent. In fact, this letter that I have read is applicable only to the county jurors. So far also as county jurors are concerned in all ordinary cases, I find them do their duty very well in the East Riding, though sometimes not intelligently; in fact, in cattle stealing cases and in larcenies, my difficulty is to prevent them convicting right and left, even on insufficient evidence. But the Attorney General has found it absolutely necessary not to permit any cases of an agrarian character to be tried by the chairman of the county, because you get a jury from the locality where the crime is committed, and it would be absurd to expect that jurors from the locality would convict in those cases; they dare not do it; and I believe that the Attorney General is influenced as much by a regard for the unfortunate jurors as by anything else, because you place them at present in this dilemma, that they must utterly disregard their oaths, or else risk their lives or properties by acting on the evidence.

3286. Therefore, your evidence comes to this: that in regard to a particular class of case which you have described, there is no prospect, either with a county or a city jury, of obtaining a proper verdict?

That is my experience; but that does not apply to Ulster. I was a circuit-going barrister there until within the last two years, and I am now speaking of my experience on circuit. I was also chairman of the county of Sligo until within the last two years, and I have a general knowledge, from reading and conversing with other judges and with the Bar, as to the state of affairs in Ireland generally.

3287. Did I rightly understand you to say that you excepted Ulster from the description which you have given?

I do. I do not think that the same failure of justice prevails in Ulster at all. In point of fact, I may as well be candid with you; I think the Land League is the source and spring of crime at present in Ireland, and it has comparatively little power in Ulster.

3288. Then has this disinclination on the part of the juries to convict manifested itself more particularly since the Land League has sprung into existence?

Very much more. The Land League defends the criminal with its money, it intimidates the witnesses, and intimidates the jurors. There cannot be a question about that.

3289. I suppose I may gather from what you said just now, with regard to the composition of the juries, that you would think it desirable to attract into the jury box representatives of a class a little better than the ordinary run of jurors?

Certainly, I should. They are more independent and more intelligent, as a rule.

3290. You think that the presence of a few such persons would be likely to induce the remainder of the jury to take a more sensible view of their obligations?

I do not think it would have the slightest influence in agrarian cases; but, on the contrary, I agree with Mr. Lloyd, that it would expose the men of a higher class, who venture to differ from the rest, to great dangers.

3291. Would it, in some cases, lead to a disagreement where the juries now acquit?

I daresay it would, because if you had a strictly conscientious and courageous man on the jury he would not be coerced; but I believe that one of the worst effects of the continuance of the jury system in some parts of Ireland now is the utter demoralisation, and the utter disregard for the sanction of an oath that it is producing. Jurors who notoriously violate their oaths instead of exciting, as in ordinary times, they might be expected to do, a feeling of astonishment, are looked upon as heroes; and witnesses who perjure themselves in the grossest manner are looked upon as patriots; and the effect of the continuance of the jury system at present, in some parts of Ireland, is to create demoralization, which

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which I very much fear a generation will not get rid of. Moreover, I very much sympathise with the class of jurors; I am extremely familiar with the poorer classes, and I think it is grossly unfair to subject them to the dangers which they are at present subjected to, because the only alternative they have is, either a violation of their oaths, or danger to their lives or property. That is my main objection to the continuance of the jury system at present, and very much out of regard for the unfortunate class who are called upon to serve as jurors.

3292. We have been told that there is a variety of circumstances which conspire to exclude from the jury that minority of better class jurors who are to be found upon the lists; the first being that they are required for service on the grand jury; secondly, that they are sometimes required for service on special juries; thirdly, that they are very often disinclined to serve; and fourthly, that the right of challenge now allowed to the defendant operates to exclude them from the jury. Are you able to state generally whether those are causes which tend to keep better class men out of the jury box.

The right of challenge always had that effect. The right of challenge in felonies is not altered, and of course every man with a good coat on is challenged for the prisoner. The utter hopelessness of trial by jury in Ireland is very well illustrated by what occurred at a late trial, even in the city of Dublin, where the venue was changed in the case of the Boyd Murder, from Wexford to Dublin. There I saw that the very able and learned counsel for the prisoner complained, and made it a very strong topic in his address to the jury, that the Crown set aside between 60 and 70 citizens of the city of Dublin who were on the jury list. In fact I remember, when I was examined before, stating that the Crown would be obliged to do that if they ever expected to obtain justice in excited times in Ireland, and that that would be an infinitely worse and more notorious system of jury packing than any jury packing that could have taken place under the old system; and it is so regarded, because it is done in open court by the Crown prosecutor, whereas under the old system it was done by the sub-sheriff, who, as I pointed out, was the sub-sheriff of a Tory high sheriff, or a Liberal high sheriff, or a Protestant high sheriff, or a Roman Catholic high sheriff, and who was himself, of course, taken from the same party. What he did was really and truly to take his panel principally from the towns in a county, and from the persons who resided near the county town, and his object was to have a fair jury, and not to have a packed jury. But there was a violent agitation, of course, raised about this system of selection by the sub-sheriff, and we find that agitation in Ireland carries everything before it, and therefore I am afraid we shall never have an end of it.

3293. Do I correctly understand you to state that the condition of the country at this moment is so very far from lucid (to use your own expression) that any mere modification of trial by jury would not be effectual to prevent a miscarriage of justice?

It would not be of the slightest use. You can do nothing with juries at present that would be of the least utility. I do not think that there was ever so dangerous an agitation in Ireland as there is at present.

3294. A mere change of venue would not be sufficient?

I think that Mr. Lloyd gave a very good answer to that question, and that is, that if you changed the venue, for instance, to a northern county from a southern county (you have already seen the utter futility of changing it even to the city of Dublin) it would be considered grossly unfair, and it would create a violent outcry. Therefore I have little faith in changing the venue. But I go farther than Mr. Lloyd in thinking that the jury act simply from terror. I think that, although the jurors perhaps may not sympathise with the actual crime, yet great numbers of them certainly sympathise with the objects which the crime is expected to further, so that you have both sympathy and terror to contend with, because all those crimes are expected to further, not the improvement of the relations between landlord and tenant, but the destruction of the relations between landlord and tenant, and in point of fact, the establishment of communism; there is not the slightest use, I think, in your blinking the question; that is the object,

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and the keeping up of an agitation which is extremely profitable to those that are engaged in it.

3295. With regard to the summary jurisdiction of the local magistrates, do you think that anything is to be done, either by increasing their jurisdiction, or by inducing the magistrates to deal with cases which they refuse to deal with at present?

I am decidedly in favour of increasing the summary jurisdiction of the magistrates. There is, in my opinion, a very ridiculous limitation upon their jurisdiction now; that is the limitation that prevents their dealing with aggravated assaults, assaults occasioning actual bodily harm and riot. I am altogether of opinion that all those things should be left in their hands, and I would increase their powers of punishment, because I think that the law would be very soon laughed at by a sharp, shrewd, intelligent people like the Irish, if punishment, and sharp punishment, too, did not follow occasionally. I would punish audacious offenders, men who openly defied the law, very sharply indeed, and I always do so when I get the chance.

3296. Should you be inclined to say that where cases of that kind were dealt with by the magistrates, a stipendiary magistrate should be associated with them?

I agree with Mr. Lloyd to some extent about the stipendiary magistrates; I think that the number ought to be increased; I have often stipendiary magistrates on the bench with me in trying criminal cases, and I must say that I have found military men the best magistrates. I think that there is a decision of character about them, and a knowledge of military law, which makes them the best magistrates.

3297. But the presence of stipendiary magistrates on the bench with the local magistrates would increase the amount of public confidence with which their decisions might be received?

I think so. As a rule, the Irish people have confidence in paid officials. They are a singular people, and, as a rule, they very seldom interfere with paid officials. You hardly ever find an outrage against a paid official in Ireland.

3298. Earl of *Derby*.] I understood you to say that no modification of the system of forming a jury would be effectual in the present state of things?

I think so.

3299. But you thought it would be an improvement if juries were composed of six instead of twelve members?

I do; and I think it would be also an improvement in civil cases.

3300. Did you not tell us that one of the great inconveniences of the present state of things was the danger to which jurors were exposed if they acted conscientiously?

Certainly.

3301. Would not that danger be increased in the case of each individual, if the number were diminished; would not the responsibility be more concentrated upon each person?

I did not propose it as a remedy for the present state of things; but if we get into an ordinary state, I should say that that would be an improvement upon the present Jury Act founded upon rating. I am sure that it would be attended with increased danger at present.

3302. Then generally your proposal is to give larger summary powers to the magistrates?

That is one portion of it; but, in counties which the Government considered it necessary to proclaim, I agree that trial by judges would be the right thing.

3303. And, temporarily, to suspend trial by jury in certain localities?

Yes.

3304. Would you extend it to all cases, or would you limit it to the class of cases in regard to which these difficulties arise?

It would

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It would not be necessary in all cases; but in ordinary larceny cases, or assaults, it is a matter of indifference whether they are tried by juries, or by judges, or by magistrates.

3305. In that case I presume that you would leave the jury system alone? Probably it would be better to do so.

3306. You would only take power to transfer to a special tribunal certain classes of cases, with regard to which experience shows that justice is not to be obtained before a jury?

I think that would be all that would be necessary. Perhaps it might strike more terror into the hearts of evil-doers if trial by jury was suspended altogether in a county.

3307. But I presume you would consider, in making a proposition of that kind, that the less departure it involved from the ordinary state of things the better?

I think so. It is in the hope that trial by jury may ultimately be preserved to us that I make these suggestions.

3308. Duke of *Marlborough.*] I think you said that if such a state of things was brought about as has been alluded to by the Earl of Derby, namely, the suspension of trial by jury, it would be received with general satisfaction in some parts?

With secret satisfaction. Of course an enormous outcry would be raised about it in the national press, and in public meetings; but jurors have told me that they would give anything in the world not to serve; they have come and implored me, even in private, to try and get them off the jury lists, because it is the terror of their lives.

3309. In fact, there is a sense of burden upon the minds of the jurors at the present time, which is enormously increased by the present condition of things in Ireland; and the removal of that burden would be accompanied by, as you say, a feeling of secret satisfaction?

Great secret satisfaction.

3310. Supposing that the criminal was found guilty by judges, and not by a jury, do you think that, viewing the feelings of the public generally, they would be content with the finding of the judges?

I may answer that exactly as I did the last question; I believe there would be secret satisfaction there too, because I have no doubt that a very large number of the unfortunate small farmers of Ireland, and the large ones too, and shopkeepers besides, are living under a system of terrorism which they would gladly shake off, and that this would have a very powerful effect in putting an end to it.

3311. There are a very considerable number of cases of a small character which are dealt with summarily at present at Petty Sessions without juries under the Summary Jurisdiction Acts, and no dissatisfaction exists with the jurisdiction which is exercised in that manner?

I cannot say that there is. Of course there is a party in Ireland who desire to frustrate the administration of the law altogether, in order to carry ulterior objects, and therefore they abuse every tribunal; an active magistrate is grossly abused, and his decisions held up to ridicule and contempt, as far as they can be. But I believe it would be a great source of secret satisfaction to the majority of persons who have any stake whatever in the country, if any means were devised to put down the present reign of terror. I may mention this as an instance of the absurd length to which what I call the reign of terror is carried; a few days before I left Cork a cattle show was to be held, at which prizes to the amount of, I think, of 750 *l.* were to be given amongst the farmers. They had entered their cattle very largely for the show. A short time before the show, an edict came from the Land League, Boycotting the show. They were obliged to forfeit their entrance-money, and none of them dared appear at the show. The shopkeepers of Cork, many of them, were very indignant at this, because it prevented the spending of a very considerable sum of money in Cork;

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and the show, as an agricultural show, was altogether a failure in consequence. So you see the lengths to which these things have gone; and I draw from this state of things the inference that a very large majority of the persons who have any property whatever would be glad to see this state of things at an end. There is also a belief, sedulously promoted, in the minds of the people, that if they keep up this violence they will wrest from the Legislature a much more effective Land Bill than if they dropped it.

3312. Referring to the proposal to suspend trial by jury in certain cases, how would you propose that the cases which are now tried by the chairman of quarter sessions should be dealt with?

I think it would be better to continue the system which the Attorney General has adopted, namely, that of sending all agrarian cases to be tried before judges of the superior courts. Of course the assize court is a more solemn court, and there is greater security perhaps for the accurate administration of the law.

3313. It would, in fact, remove cases from any local influence?

It would remove cases from any local influence; and then, if it were thought requisite, there might be an appeal to the Court of Criminal Appeal besides.

3314. In those cases you would propose that three judges should be a Commission to try the cases?

The two judges of assize, I think, might try such cases very well together.

3315. As I understand, the summary of your evidence is, that during the present state of things in Ireland, and in the particular locality with which you are now connected, you think that trial by jury has broken down?

The East Riding is rather a prosperous district; and, although I believe that the jury system cannot be administered even there in agrarian cases, yet I do not want to give the East Riding so bad a character. I am speaking generally now.

3316. But speaking generally, as far as your experience goes, in the city of Cork more especially, and in the East Riding, perhaps with some degree of limitation, trial by jury has wholly and completely broken down?

I think so, in that class of cases of which I spoke, but only in that class in the city.

3317. Lord *Emly.*] I understood you to say that you would not attach very much weight to a more frequent change of venue?

I think not.

3318. The suggestion of one of the witnesses before us has been that the judge should have the power, in a very extreme case, of refusing to receive the verdict, and then that he should have the power of changing the venue and directing that the prisoner should be tried somewhere else; do you think that those two things together would produce any considerable effect?

I do not. I believe that the jury system is looked upon, in the disturbed parts of Ireland, as a regular palladium of crime, and that, no matter how well-disposed jurors were, they dare not convict.

3319. Do you think you are quite justified in speaking of the futility of the change of venue to the city of Dublin?

I allude to two remarkable cases, the Parnell trial and the Boyd murder trial. I do not mean to quarrel with the verdict in the case of the Boyd trial; but I mentioned to your Lordships that the Crown, even in the city of Dublin, was obliged to set aside between 60 and 70 jurors taken from the jury list of the mercantile men of the city of Dublin, and that the prisoner's counsel made that a topic of great weight in his address to the jury; and the inference I drew was, that if the Crown, only anxious for a fair trial, was obliged to have recourse to a measure of that kind, it would be futile to change venues to such a place, and that verdicts obtained in such a way would carry very little moral weight.

3320. But have there not been a considerable number of cases of an agrarian character tried in Dublin in which the juries have given proper verdicts, say within

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within the last year, and, I think, even at the very last Commission, if I am not mistaken?

Those are the two most remarkable cases that I remember; but in all cases the Crown is obliged, in order to obtain anything like a fair jury, to set aside a great number of jurors. I do not mean this as any slur upon the Catholic religion at all; but unfortunately it happens that in very Catholic districts it is people of that religion who are most set aside, and I think that has a bad effect. It is always used as a topic to excite discontent; and I think, therefore, that where verdicts can only be obtained by the setting aside of a great number of otherwise unobjectionable jurors, the juries are almost useless to repress crime.

3321. But surely if you can arrive at justice, or anything near justice, by setting aside a considerable number of jurors, that is a far less violent proceeding than abolishing trial by jury altogether, is it not?

Yes; but you fail, no matter how you exercise the right.

3322. But as I understand, in the City of Dublin you cite only two cases, and in one of those cases you say that the verdict of the jury was fair?

I do not say that; but I do not quarrel with it.

3323. With regard to the peremptory right of challenge of 20 jurors on the part of the prisoner, do you consider it desirable to abridge that right of challenge?

That is a very old right; and it exists in England as well as in Ireland in cases of felony.

3324. Were not all felonies capital offences at the time when the prisoners were given this peremptory right of challenge, and was not that the ground of its being given?

I daresay it was.

3325. Would you yourself consider that the abridgment of the right of challenge on the part of prisoner, in all cases in which life was not involved, would give a greater prospect of getting fair juries?

You might improve a jury by that, because the right of challenge, as at present exercised, results in the exclusion of every man who is likely to give an independent verdict. The reason why persons of the higher class being on juries in Ireland is of very little use is, that they are invariably challenged by the prisoner. In point of fact, what the prisoner seems to want, naturally enough, is to get the most ignorant and easily intimidated jury he can.

3326. The abridging of the right of challenge would, to a certain extent, defeat that object, I suppose?

It would, undoubtedly.

3327. In any flagrant cases of miscarriage of justice, on account of the acquittal of the prisoner, or disagreement of the jury, have you ever got the qualifications of the jurors?

No.

3328. Lord *Ardilaun*.] If there were a large number of cases in which the venue was changed to Dublin, or to the north of Ireland, or to any other part where it might be thought most likely to get a verdict, do you think that the Land League would not be able to create intimidation in those places?

It would be very unfair to put upon those places the duty. I have heard jurors say that they look upon it as the duty of the Government to keep order in Ireland, and that they will not be made scapegoats of the Government, to risk their lives to do it, and that they will not find verdicts.

3329. You have heard it stated that there has been in several cases a tendency to Boycott jurors who found verdicts of guilty where the venues were changed?

I have.

3330. Do you know the case of a Dublin merchant who was Boycotted?

Yes; Boycotting is the most dangerous weapon. I have heard many men

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say that they would not mind standing a shot from behind a hedge, but they cannot stand this slow destruction of their property, and the property of their families, through this abominable system of Boycotting.

3331. And there is no reason why that system of Boycotting might not be extended to places where it does not exist at present?
I believe that the Land League rely upon it as their most powerful weapon.

3332. Lord *Inchiquin.*] It is not to any want of intelligence that you complain of on the part of the juries?
No.

3333. You have always found them intelligent enough?
I cannot say that. I have not indeed found them intelligent enough; but I should think that they are quite as intelligent as English agricultural juries, and more intelligent perhaps than Welsh juries.

3334. You do not think that it is the want of intelligence that causes them to find wrong verdicts?
No, it is not.

3335. You think that this change, of temporarily doing away with trial by jury, would meet the approval, at any rate, of all well-disposed people in the country?
I do, and the tacit approval of a good many ill-disposed people, because they have a horror of being called upon to discharge the duties of jurors.

The Witness is directed to withdraw.

MR. ROBERT FERGUSON, Q.C., is called in; and Examined, as follows:

3336. *Chairman.*] I BELIEVE you are a Queen's Counsel, and Chairman of the West Riding of the County of Cork?
I am.

3337. How long have you held that appointment?
Since February 1872, which is the date of my appointment to the West Riding. I was previously practising on the Munster Circuit.

3338. I think you gave evidence before the House of Commons Committee in 1873?
I did.

3339. Will you state to the Committee, in general terms, your impression of the results of the changes in the law introduced by the Act of 1871?
The effect, as far as my experience as chairman has gone, of the introduction of jury system of 1871, 1872, and 1873 was, that although the jurors were sometimes awkward in appearance and manner, the verdicts were, on the whole, satisfactory; I was more than once surprised at the amount of intelligence evinced hy the verdicts of the jurors under the new system.

3340. We need not go with much minuteness into that, because that is rather ancient history just now; but generally your impression is favourable to the principle of the change which was then introduced?
Yes; but I certainly found that after the right of challenge in misdemeanour cases was introduced, the quality of the jury was deteriorated. I attribute dthe good effect very much to the fact that there were some intelligent men, men of a class equal in intelligence and position to the special jurors, though, possihly, not in qualification. and I have reason to think that the intelligence displayed was very often attributable to the existence of such men on the juries, because they influenced the others who were, in fact, educated by them.

3341. But

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3341. But the introduction of the right of challenge in the case of felonies dates further back?

It does; but cases that were not of that class very frequently came before me at sessions, and then I found that the six men challenged were challenged from their appearance and general character, and that took away from the jury the class of men whom, of all others, I should have liked to keep there.

3342. Does that hold good with regard to cases of felony?

It holds good in every case. The challenge will always take from the jury box the very best men that you can have as jurors. The right of challenge is exercised, not with a view to cause; it is exercised on behalf of the prisoner to get away the men who are likely to convict.

3343. Are there any other causes which keep the better class jurors out of the jury box?

Certainly. In the country districts the jurors are canvassed and intimidated. The better class jurors, not wishing to yield to canvassing, will keep away, or they will attend and not answer. Then the present system has not had fair play in many cases; for some time, where a sufficient jury is obtained, the judges will be careless in inflicting fines on the men who do not answer. It is all important to secure the full attendance in the first instance, which is the object of the Act, and to have all classes answer to their names or be fined. Then there would be a better chance of getting the good men who will remain away, or not answer, not wishing to give verdicts contrary to their conscience, or to submit to a canvass, or intimidation. All those causes combined prevent the new system from getting fair play.

3344. You would recommend greater stringency in the imposition of fines?

I would, so as to get better men into the jury box.

3345. Do I correctly understand you to suggest that a juror who did not answer to his name on the second calling over of the list, should be liable to a fine, whether a jury was ultimately formed or not?

I would not wait for the second calling over. I would have all the jury called over in the first instance, and I would have them all attend. I speak now of quarter sessions practice. I would have them answer, and be there, whether they were required or not.

3346. But is it not the case that jurors very often are in their places and answer to their names when the list is called over at the opening of the sessions, but that after that they, so to speak, evaporate, and are not to be found when the jury is in process of being formed?

I think that they are more frequently absent at the first calling. If they once answer they take care to be there. But I must say that, besides limiting the right of challenge, I can see what appears to me a better way of securing good jurors, for I would certainly secure, on every jury, a certain number of high class man, and that I think can be done.

3347. How would you secure that?

I would have a certain number of special jurors, or men equivalent to special jurors, and as to those men I would limit the right of challenge, so that no right of challenge should eliminate the whole of those from the jury box.

3348. You would say that a certain definite proportion of the common jury should be composed of men having the special juror qualification?

Yes; and I would not allow the whole of those to be taken away from the jury box by any right of challenge, and for that you have the sanction of the system which exists in Scotland.

3349. Do you think that the number of challenges now allowed to the accused is excessive?

I think that the number, in cases of misdemeanour, viz., six, may be left as it is. I would diminish the number of challenges in cases of felony which were introduced *in favorem vitæ*, in cases which were formerly of a capital character;

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I would limit the challenge to two out of five special jurors. In doing that I also follow the system which is adopted in Scotland. There are five special jurors, and they allow two only to be challenged. I do not think there would be any injustice in limiting the number of peremptory challenges in that way, and I think it would secure a better class of jurors.

3350. Then I understand you to say that the minority of better class jurors, which is not a very large one to begin with, is diminished by those circumstances which you have described?
Invariably.

3351. Will you state to the Committee how the common juries which are thus constituted have acquitted themselves of their duties within your own experience?
Within my own experience they have acquitted themselves remarkably well. I of course do not refer to the present state of Ireland, because new cases which are affected by the present state are not tried before me; they are very wisely taken to be tried before a judge of assize. It would be useless to try them at all events by a jury taken from the same division as the accused came from. They come from the same locality, and if the application to remove such cases were not made before me, I would suggest it; but it is almost invariably made by the sessional Crown prosecutor, so that cases of that class, which formerly used to be tried before the sessional jury, are now tried by the judge of assize.

3352. Therefore, in your case, you have not had any recent experience of the conduct of juries in agrarian cases?
Nothing worth talking of.

3353. And you express yourself satisfied with the manner in which they have dealt with cases which have not that complexion?
Certainly. Sometimes in cases of assaults, if there is anything of faction feeling, they cannot well be depended upon, but with that exception they have acquitted themselves remarkably well; and as to sending them to a judge of assize, so strongly does that influence the prisoner, and so much is he afraid of the change, that in one of the last cases brought before me, where a jury disagreed, the prisoner knowing that I should at once send him to be tried in Cork, thought it better to plead guilty before the jury had left the box than to be sent to another locality for trial.

3354. Therefore you do regard it as indispensable in the interests of justice that cases with which a good deal of public feeling enters should not be tried by a jury in the locality to which the case belongs?
Assuredly. I think it would be perfectly useless.

3355. With regard to the sessional grand juries, I understand that you have a suggestion to make to the Committee?
I do not see, nor have I ever seen the advantage of sessional grand juries; the very men are on that jury that I should like to see on the petty jury for the trial of prisoners; there they, or some of them, would be useful; but the sessional grand jury is very much a matter of form, and I think could be dispensed with by allowing the indictments, as they are now to come before the petty jury in the shape of informations sent up by the sessional Crown prosecutor directly to the petty jury, in the name of the Attorney General, or otherwise. I do not see what difference there would be between that and their being sent up to a grand jury, who would find them and send them down to be tried by the petty jury. I think that we could dispense with that form, and have them tried directly before the petty jury. Those informations have come before the magistrates, and they have been quite sifted before they go before the petty jury, and I myself cannot see the advantage of the additional trial by the grand jury.

3356. You would recommend that change upon a double ground; first, that the finding of bills by the sessional grand jury is almost a formality, and, secondly,

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secondly, that by making that alteration you would liberate a certain number of very useful men who would be available for service on common juries?
Just so.

3357. Some evidence has been given as to the expediency of increasing the summary jurisdiction of the local magistrates; are you disposed to agree that such a charge would be advisable?
If at all, to a very limited extent. I know that such increase would be unpopular, and I do not think that the magistrates at all wish for an increase of jurisdiction. A change may be made in cases of assaults; but, as a general rule, I would not increase the jurisdiction of the magistrates. I do not think it would be popular or advisable

3358. You are not of opinion that there are certain minor offences with which the local benches either cannot or will not deal, and which would be best met by prompt, but not necessarily very severe punishment, such as the magistrates might impose?
Of course cases of assaults the magistrates could very well deal with, and I do not see why the fact of the assault having created some bodily harm should deprive the bench of magistrates of the right to interfere with it. There is, however, a very strong and general feeling against the increase of magisterial jurisdiction in the country.

3359. Would that feeling be equally strong if it was made indispensable that the stipendiary magistrate should be associated with their colleagues upon all occasions?
I think the presence of a stipendiary magistrate always to be desirable and useful.

3360. As a matter of fact, I suppose the stipendiary magistrate is not always present?
If not engaged elsewhere he attends. He generally attends; he looks upon that as a primary duty, unless he is obliged to go to some other locality. He is very seldom away.

3361. Lord *Tyrone*.] Does your experience deal with the other courts besides the county court?
My experience of the other courts was previous to the introduction of the new system, and then it was as a practising barrister. When appointed I had to discontinue the circuit practice, and then I was deprived, of course, of any personal experience of the working of the system on circuit.

3362. But I suppose living in the country, as you do, you have an opportunity of judging of the action of the other courts?
I do not live in the country. The habit is the contrary; we are not supposed to live in the county to which we are appointed; but I do know a good deal of the country.

3363. Then is it upon your opinion that, under the present system, with the present state of the country, there is any chance of getting a verdict in cases of agrarian or political charges being made?
I can merely judge of that of course from what I read in the papers, or otherwise; and the superior judges are much better able to give an opinion than I am.

3364. With regard to what you say about the juries, you propose to improve the juries by adding special jurors?
In every case.

3365. But if you were able to add special jurors, would not even one man of a different class render it impossible to get a verdict?
I look upon a disagreement as better than an acquittal; anything is better than a verdict of acquittal against evidence. A disagreement punishes the accused to an extent which is often sufficient; sometimes he cannot get bail; he is kept

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in terror of the coming trial; and I have found it have a very good effect indeed. An acquittal against evidence is very demoralising.

3366. Has it ever struck you that the class of jurors might be improved by adding the sons of special jurors, or other men of respectability in the country, to the panel, whether they were qualified by rating, or not?

I think adding intelligent, educated men, whether rated or not, would improve it.

3367. The Chairman asked you a question about the power of the magistrates, and I understand you to say that you did not wish to amplify their powers?

Not generally; to a certain extent it may safely be done.

3368. Do you not consider that the certainty of a smaller punishment in cases of this sort would be a much greater deterrent than the possibility of a much more severe punishment?

A certain small punishment is far safer and far better. In fact we have, in order to get verdicts, to be careful in not giving severe sentences, for it would increase the difficulty of getting verdicts. Sure but certain punishment is what is required.

3369. Would not that be attained, I will not say by enlarging the powers of the local magistrates, which you rather object to for certain reasons, no doubt; because they mostly belong to the landlord class), but by increasing the powers of the resident magistrates?

I do not object to the local magistrates, because they belong to the landlord class; I have the highest opinion of them, but I think they do not themselves want that enlarged jurisdiction; and I think in the country it would not be popular, or well received, because that would be coming to dispensing with juries altogether. I would enlarge their powers in a qualified and cautious manner, but it would be difficult to give the jurisdiction to the resident magistrates, and to exclude the others. I would not be for making a distinction at all. Whatever jurisdiction they are to have, I think the resident magistrate sitting with the others should constitute the tribunal, and not sitting alone.

3370. My question was with regard to your answer to the Chairman; you said that you did not consider that the enlarging of the powers of the magistrates would be popular in the country; I, myself, of course, have confidence in the magistrates as landlords, but I want to know whether you thought that the enlarging of their powers would be unpopular in the country, because they were landlords; was that your reason for giving that answer?

It may be a reason, but it is not my reason.

3371. Viscount *Hutchinson.*] You were saying just now that you would like to see a certain per-centage of men of a higher class than ordinary common jurors upon the jury; I think you said you would wish to see five such men on the jury, and then you would allow a challenge of two?

Yes, so as to leave a fair proportion. I gave that as an illustration.

3372. That right of challenge would always be exercised, would it not?

I would not take away the right of challenge altogether, because there may be a very good challenge for cause, though the people do not like to express the cause.

3373. So that, practically, would reduce your five special jurors to three?

It would.

3374. Do you think that the effect of the presence of this superior class upon a jury would be to secure verdicts?

I think that the effect would be to secure verdicts according to the evidence in fair cases.

3375. Do you not think that it is just as probable that it would secure a disagreement?

I look

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I look upon a disagreement as very much better than an acquittal against evidence. I find, except in cases of excitement, the intelligent jurors lead the others, they argue with them, and in the jury box or when they retire, they do more to secure a true verdict than the judge can do from the bench As a rule, when there is no popular excitement, their intelligence and honesty would influence the great body of the jury and procure unanimous verdicts; but at all events it would secure what is better than an acquittal in the face of evidence, a disagreement.

3376. It has been suggested to the Committee several times that it would be advisable to introduce the Scotch system of verdict of not proven; what is your view as to that?

I have thought over that a good deal, and although I would not suggest it at present, yet, considering that all changes since 1871 have been on the lines of the Scotch system invariably, and with good effect, it would not surprise me if we came to that, nor would I object to it in good time. A most singular instance of the trial of it exists in Scotland, for after a very long experience of the English system in civil cases, nearly 50 years, I think, they have gone back again to the verdict of the majority; that is very strong evidence in favour of it, but it may not be necessary at present. As a rule, the Irish are fond of juries; they like trial by jury. In civil cases their leaning to trial by jury, is singularly illustrated by the fact that, although since the year 1856, there has been a power of trying civil cases before a single judge, it is a power scarcely ever used; litigants prefer trial by jury.

3377. But I understand you to think that, in normal times, even in agrarian cases, the introduction of this leaven into special juries would secure ordinarily fair verdicts?

In ordinary circumstances I feel convinced that it would.

3378. With regard to fines, you said that your experience is, that if a juror answers at the first calling over he generally remains?

He generally remains.

3379. We have had it in evidence here, that it is very often the habit for a juror to answer at the first calling over, and then when he is called a second time to serve upon the jury itself, he is *non est;* that is not your experience?

No, I have not found that.

3380. We will suppose that sort of thing to happen, a juror to answer upon the first calling over; is there any means in the world by which you can secure his attendance or punish him for non-attendance, if he is not present when he is called to serve upon the jury?

If his name is never called after that, I do not know of any; if he is called again he is sure to be fined if he is not there.

3381. Lord *Ardilaun.*] Then you would, yourself, in the case of absence upon the second call, fine up to a large amount on the absence of a juror?

Certainly.

3382. Up to what amount?

Two pounds is the smallest; I do not know the exact amount to which we can go.

3383. Viscount *Hutchinson.*] But I understand, practically, it is never done?

The larger amount is never inflicted; but we are all too charitable, I think, in that respect. Speaking of myself, I have neglected it until I saw the necessity of it.

3384. If a juryman by answering escapes the statutory fine of 2*l.*, and if, subsequently, he does not answer, and you get a jury without him, you do not trouble yourself about fining him?

If he does not answer the second time, I should certainly fine him. Charity would

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would go the other way, but I think that is an abuse. The present system does not get a fair trial so long as feelings of this kind are allowed to prevail.

3385. Could you suggest any means by which it should be made obligatory to fine?

By securing the element of the special jurors, and having no jury perfect without them. Then they would be careful to attend.

3386. Lord *Inchiquin.*] I think I understood you to say that if these alterations which you suggest in the jury system were made, it would be unnecessary, even at present, to suspend trial by jury?

I have not at all spoken of the effect in agrarian cases in the present state of Ireland, for this reason: that my experience is nothing as a judge in connection with them, for all those cases are sent now to the judges of assize; we are not allowed to try them at all.

3387. But apart from your experience as a judge, you must have had an opportunity of forming an opinion as to the present state of the working of the Jury Act?

An improvement might be effected by change of venue.

3388. You said, I think, that you are not very much in favour of raising the qualification of jurors?

The raising of the qualification would have, I think, practically no effect. The principle objection is this: we could not in some of the localities in my district, for instance, have a sufficient number of jurors if the qualification were raised.

3389. Do you know how often the jurors have to act in your district now?

Very frequently twice in the year, and they come a very long distance.

3390. It was suggested by one of the witnesses here that the qualification should be raised as high as possible in every county, so as to allow a sufficient number of jurors to be on the panel, so that they should only have to serve twice in the year; would you be in favour of that system?

Anything that could be done to ease the jurors would be desirable, but in my district I think it could not be done.

3391. I am talking of ordinary times?

I daresay it would be a very good thing.

3392 Lord *Ardilaun.*] We have had a good many complaints here about the local magistrates and resident magistrates sending on cases that they should decide themselves; do you find that that is done in Cork and your district?

No, I have found them dispose of the cases that they ought to dispose of very generally.

3393. Lord *Emly.*] At present the oath is a very difficult one to understand, "You shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, and a true verdict give according to the evidence," and so forth. That, of course, is all Hebrew to the jury. If you had a very simple oath, do you think it would have any greater effect upon their consciences?

Decidedly, the more simple the oath the better; for we have afterwards in charging the jury to show them what their real duty is, and to tell them what the substance of the oath they have taken is; and that would certainly have a very good effect. There is another thing that affects them. Of course we are bound to tell them that if there is a doubt, the prisoner must get the benefit of the doubt. So long as the prisoner cannot be examined it is difficult to avoid that. But I think more is done in ease of conscience on that part of the charge than upon any other. A doubt is so easily raised that many honest jurors who are disposed to acquit will say to themselves that they have a doubt, and we have to be most careful to show them what that class of doubt should be; but I think the doubt has led to more unfair verdicts than anything I know of. It salves the conscience, and they seize on it; and I think that if the oath could be simplified,

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fied, and this difficulty about the doubt eliminated we should have better verdicts.

3394. One of the most eminent judges in Ireland, the other day, said to me, that he believed that the jurors satisfied their consciences with regard to not finding any verdicts at all by imagining that in so acting they did not go against the oath; have you ever heard anything of that sort?
No, I have not.

3395. At any rate, would it not be easy in any new form of oath to avoid the possibility of their having any such idea?
It would be most desirable to have it as simple and strong as possible.

3396. Have you considered at all what the effect would be of more frequently changing the venue?
I think a change of venue is always beneficial. I gave an illustration of the apprehension of a prisoner himself as to a change of venue where he actually pleaded guilty sooner than have the venue changed, where the jury disagreed; but I think removing the trial from the locality would be always beneficial.

3397. There is a change of venue by a sort of natural process at the winter assizes many different circuits being mixed up together; and that has had a very good effect, has it not?
A very good effect.

3398. There are more fair verdicts found at the winter assizes than there are at the other assizes?
Certainly.

3399. That points directly, does it not, to the advantage of change of venue?
Certainly; and the opinion of the executive is manifest when they always send from our courts to the adjoining courts cases of an agrarian class.

3400. What would you say to giving power to the judge, of course to be exercised only in a very extreme case, of refusing to receive a verdict?
I have not considered it before to-day here; but, so far as I have considered it, I think it would be beneficial.

3401. Duke of *Marlborough.*] Do you endorse what I think you must have heard fall from the previous witness, as to his opinion of the influence of the Land League generally upon juries and jurors?
There can be no question that, as part of the present agrarian combination, it does influence them; but the influence of it would be much better understood by judges of assizes than in the limited locality where the cases are not tried. Those cases do not come before me, and I could not personally give any opinion with regard to them; but it is a very natural result from the combination.

3402. Earl of *Derby.*] You have spoken of various steps that might be taken to improve the composition of juries and the administration of justice; do you think that any one of them would be effectual in agrarian cases while anything of the present state of feeling continues?
I think in many cases, even in the present state of things, it would lead to a disagreement; I do not think it would be sufficient to meet the present emergency.

3403. *Chairman.*] I think you have stated that, in your own court, agrarian cases have not been tried, as they have been, as a rule, sent on?
They have been, as a rule, sent on.

3404. You also, I think, expressed the opinion that there would be no prospect, if they were tried in your court, of getting proper verdicts from the juries?
In my opinion there would be no prospect, seeing that the prisoner and the jury came from the same division, and that all the jury were canvassed; and in the present state of feeling and terrorism I think that it would be hopeless to expect verdicts.

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3405. In your own court there has been no breakdown of justice, but there has been no opportunity of anything of the kind?
Quite so.

3405*. Lord *Inchiquin*] Do you find that the magistrates attend at quarter sessions and assist you?
The magistrates, as a rule, attend very fairly. They attend very fully on the first day of sessions; and if anything should come on requiring their assistance, a suggestion would bring them in; but if there are only ordinary cases the attendance will be very much diminished after the first day.

The Witness is directed to withdraw.

MR JOHN CHUTE NELIGAN, Q.C., is called in; and Examined, as follows:

3406. *Chairman.*] YOU are the Chairman of four counties, I believe?
I am Chairman of the four counties of Meath, Westmeath, King's County, and Longford. Before that I was in the county of Leitrim, and before that in the county of Louth.

3407. How long have you held these appointments?
I was appointed chairman in 1866: I have held those four counties since 1878.

3408. Therefore you have had excellent opportunities of watching the operation of the Irish Jury Laws?
I believe so.

3409. Will you state to the Committee whether, as far as the main principles are concerned, you approve of the change which was introduced in 1871?
I believe it is impossible to go behind it. I was chairman before 1871; after the change I found the present system to work fairly enough until the recent agitation commenced in Ireland. Since that agitation has come to a head I look upon the jury system as being utterly and entirely hopeless and helpless.

3410. Should you go so far as to say that, under present circumstances, any system of trial by jury would not stand the strain that is put upon it?
Not in cases which come at all within the influence of the organisation known as the Land League. That organisation is most extensive; it goes into every class of society, and I believe that none of your Lordships, except those who happen to live in Ireland, can realise its extent. It even goes to private domestic servants in some counties over which I preside as chairman. I have known cases in which gentlemen have complained to me that they cannot dismiss a servant who was in error, and whom they were anxious to dismiss, but whom they were ordered to take back; and that for the purpose of protecting their cattle at night, they must keep men whom they were anxious to dismiss. Magistrates have complained to me at quarter sessions, and asked me what was to be done. Of course I could not assist them.

3411. The evidence that we have received has been directed to the establishment of two rather different propositions; one of them being that certain improvements in the machinery of our jury system would be expedient; and the other in the direction of showing that any jury system during the prevalence of the present excitement would break down; I understand you rather to dwell upon the latter of those two propositions?
My answers have been directed to the latter proposition. But there are improvements which I should like to see made in the present system, even under the most favourable circumstances.

3412. Would you mention them?
I would raise the minimum qualification in most counties, certainly in the counties

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counties with which I am personally acquainted, and for this reason, that I believe you would then get rid from the panel the men whose education and habit of thought had not enabled them to act as jurors. I find that after the case is closed, after the jury have been addressed by the advocates for the Crown and for the prisoners, and after they have been charged, they very frequently ask most silly questions, which show that they have not appreciated the issue they have to try. I would entirely apply that observation to the poorest class of those who come on the panel before me.

3413. Are you able to say that by raising the qualification you would get to a level where you would find superior intelligence and independence?

Judging from the questions which have been put to me, and judging from the observations which I hear from the jurors themselves, I believe so. The questions which would lead me to consider that a juror had failed to realise or understand the issue that he was trying, have almost invariably come from the very poor men, men whose education and habit of thought, as I have already stated, have rendered it impossible for them to weigh in the balance conflicting statements and conflicting evidence. For instance, in those cases where an *alibi* is attempted to be set up for the prisoner, you never get one of those men to get over it. Wherever you have conflicting swearing, as you have in most of the cases, I do not know whether these jurymen's sympathies are with the crime or with the criminal, but certainly their sympathies are with the evidence for the defence; so that I should be glad to see the minimum standard raised in the counties with which I am personally acquainted.

3414. How high would you raise it?

That would depend very much upon the number of men upon the rate-book, because you must try and keep a sufficient number of jurors to call from; but I certainly would raise it from 10 *l.* to 15 *l.* in the lowest of the counties.

3415. Have you considered at all whether by so raising it you would still leave a sufficiently numerous jury list to provide you with the materials for juries?

I believe I should. Of course I should render the duties of a juror more onerous on the men who were left; but that I should not put in the balance against getting a fair trial by jury.

3416. Are you disposed to agree in what has been said by witnesses who have been examined previously to you, that, from a variety of circumstances, the better class of jurors, whose names are to be found on the list, are excluded from service on the juries?

I do, and very much by the necessity of the attendance of grand jurors at quarter sessions. It would be well to bear in mind that the grand jury system took its origin at a time when there was not a public prosecutor in the country. The origin of it was to prevent any man being put on his trial on a frivolous or vexatious charge; but we now have a public prosecutor in the country, and when each case has to go through what may be called the alembic of the law officers, the function of the grand jury is not so necessary, for if a high officer like the Attorney General is the prosecutor, the magistrates at petty sessions having returned the case for trial, it is evidently useless that that case should go again before 23 men, whose inquiry is of the most superficial character. They know nothing whatever of it until it comes into their room, and they will ask one or two questions, to give what is called a *primâ facie* case, and then they find a true bill. There must be four quarter sessions and 23 grand jurors at each; the sheriff must summon on his grand jury from 27 to 30 men, so as to make allowance for absentees; four times 30 are 120, so that you have 120 men of the most intelligent class (they must be taken from the special jury list) withdrawn from the trial of cases.

3417. But do you not almost add to what you have said, that the functions of the grand juries were more necessary at a time when the selection of the common juries was left entirely to the sheriff?

Quite so. I see no possible advantage that is gained at present at quarter

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sessions by insisting on the attendance of a grand jury there; and I see great disadvantage resulting from it.

3418. Owing to the waste of good material?
Yes, you remove from the jury box a leaven that perhaps might do some good with the mass.

3419. The jury, owing to the exclusion of that leaven, I suppose, is, as a rule, composed of an inferior class of jurors?
It is; and whenever a person is defended at quarter sessions, the rule is that every man who comes into the jury box with a good coat on his back is peremptorily challenged.

3420. Would you restrict the right of challenge?
I should be inclined to do so. Of course one deals with anything touching such an institution as trial by jury with great delicacy; but the peremptory right of challege in felonies was originally given to the prisoner, as the lawyers say, *in favorem vitæ*, in consequence of the death penalty being the result of a conviction. I think, myself, it would be more satisfactory that every challenge should be a challenge for cause.

3421. Would it not sometimes happen that there might be fair reason for objecting to a juror, and yet that the accused might have some difficulty in showing cause?
That may occur, but I think you provide for that by reducing the number of peremptory challenges; I think that 20 is a very large number. I do not know whether it would be out of place if I were to read your Lordships the figures which I have taken from the panel of my native county of Kerry. With a view to coming before your Lordships' Committee I looked through the panel of the last assizes and of the assizes before; and from my personal knowledge I went through the panel with a view to be able to form an opinion (satisfactory to myself at all events) of the result of the present system. On the jury panel for the county of Kerry there are 1,067 names, which I consider a number totally unnecessary. I find that, in the spring assizes of the past year, the sheriff returned 80 names; I went through those 80 names very carefully, and of those 80 names I put down 21 men whom I thought would be reliable men, who could be trusted in an emergency to find an independent and honest verdict. I asked some of the county officials to correct me afterwards, and we agreed within one or two numbers. Of that 21, three were absent, so that that reduced the number to 18; and it was manifest that the peremptory right of challenge would have swept the whole of those 18 from the panel. In the summer assizes the panel consisted of 103 names, the number varied very little. I would myself, from my personal knowledge of my native county, have put down some 23 or 24 of those as being reliable names. There again the absentees were four, and there again the peremptory right of challenge on the part of the prisoner, who of course would be well advised as to whom he should challenge, would sweep the real backbone of that panel away.

3422. We have been told that this better class of jurors are sometimes not very anxious to take their share of service?
I find that to be so, and there is a suggestion that I would make with reference to that. Your Lordships are aware that at present when the panel is first called, every juror who does not answer is, *ipso facto*, fined 40 *s.*; I would graduate that fine, and wherever a man whose rating, say, came up to 50 *l.*, if that man did not answer, I would put a heavier fine upon him than I would put upon a man who was rated only at 10 *l.* When a man with a large rating did not answer on his first calling, I would put the statutable fine on him at a much higher figure than 40 *s.*, with no discretion in the judge to remove it; I would treble it; I would make it a statutable fine.

3423. But it would be a graduated fine; to whom would you leave the discretion to graduate it?
It should be done by a sliding scale, by an Act of Parliament; I would make

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make it a more penal thing for a man with a large rating not to answer than I would for a small struggling farmer with a rating of 10 *l.*, which is the minimum. A great majority of jurors answers the first call; that saves them the statutable fine. Then after the panel is called over, the names are written on pieces of card and thrown into the ballot box, and when they are balloted for they do not answer, because the statutable fine does not apply. I find that to exist, but I inexorably fined, and never let off the fine, and now I do not find that the necessity exists. When once a man answers the first time, he knows that he must remain in court, and he does remain.

3424. Did you find it necessary to resort to very heavy fines?

No, never higher than 5 *l.*; that was sufficient; and I insisted upon a good many of those fines being paid; when it became known that I was a little hard in these matters, the necessity did not re-occur.

3425. You have suggested various palliative measures which might have the effect of bringing a better class of jurors into the jury boxes; but do we rightly understand you to say that those palliatives would be worth anything, as long as the present state of the country continues?

I do not; the terrorism is too wide spread; I can give your Lordships instances of it. At the last assizes, in my own county, Kerry, there were two acquittals that would scarcely be believed credible. I have brought the depositions in those cases with me, and I have them in the room, if you like to hear them; but I can give you the substance of them. Men where taken redhanded committing Whiteboy offences. In one case, which was tried last week at Tralee, before Mr. Justice Lawson, the police patrol were out at night; at half past two in the morning, close to the assize town of the county, they heard a noise; they came upon three men with blackened faces, and with sacks over them, and one or two of them with masks on their faces; they were attacking a house and demanding arms. The police rushed at them, and at once arrested one man, and the other two they recognised by their appearance and voices. One man they caught in the act, with his face blackened with soot and grease, and a sack over him. They brought him at once into the barracks, and had him before the magistrates the next morning, with the soot and the grease still on him, and he was committed. He was brought to trial, and the jury scarcely turned in the box and acquitted him. The other two men who were with him were arrested by the constabulary within a very short time indeed after the occurrence. They were fully identified, and yet they were acquitted also. Of course it was not quite so strong a case against them as the case of the first man, because an interval occurred during which they were not in custody, but it was a very short one; but the first man was never out of the constable's hands from the time that he was taken in the act until he was put into the dock. Then there was another case nearly as bad, tried at the same assizes. Three men attacked a farmer's house, and they broke in the door. The man was in bed, his wife ran out of the room to speak to the men, and give her husband time to conceal himself. He got behind some barrels that were in the bedroom. The men came in, and the wife knew them; they were neighbours, and the man himself knew them. They searched his house for him, and they prodded with pitchforks and pikes wherever they could, but they did not find him, fortunately. They insisted upon getting his rent pass-book, because they said they had heard that he had paid his rent. One of them was a man with a peculiar and extraordinary deformity; his leg was twisted and crippled in the most extraordinary way. The wife knew them; the man himself knew them; and their daughter, who was in the house, knew them. They all identified them, and swore to them. The jury, with very little hesitation, acquitted them.

3426. You attribute such acquittals as those to terror rather than to sympathy?

I do. I may give your Lordships another instance of the terror that exists, to show the kind of mischief that it is causing. You are aware that in our courts, where cases are tried by civil bill, the civil bills must be served by what are called process servers; they cannot be served by any member of the public. Within the last few months, in the county Westmeath, three of the process

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servers have sent me in their resignations, saying that they dare not hold their offices; they did not believe that it would be safe for their lives; and for a large district of the county of Westmeath, round the town of Mullingar, there is no one to serve processes, and my court is paralysed in a large district of Westmeath for the want of persons to do it. There are two vacancies for process servers in the King's County, and I can get nobody to take the office. Up to this time, when there were vacancies for process servers, we were besieged for them, for there is a small salary attached, and they get fees.

3427. Then if mere palliative measures are not likely to be effectual, have you any suggestion to make to prevent the miscarriage of justice?

First of all, with reference to my own court, I would suggest that whenever any officer of my court has been interfered with in the service of a process of my court, there should be given to myself and the justices associated with me, the power of dealing with it summarily. The magistrates at petty sessions have a summary jurisdiction, therefore there is no reason why magistrates at quarter sessions might not have summary jurisdiction also; and I would give them that summary jurisdiction where the offence was actually contempt of our own court, where they would not allow our officers to serve our process. I think it would be a very safe thing, and a very prudent thing, to give the court over which I have the honour of presiding, a power of dealing summarily with those cases. Of course, to a certain extent, it would be infringing upon the right of trial by jury, but it would be in a very limited class of cases, and in a class of case that would really amount to a contempt of the court itself, and might properly be dealt with summarily.

3428. That, however, would only cover a limited portion of the ground, because there are obviously other offences of an agrarian nature which would not involve contempt of court?

Quite so; those are cases which I would rather see sent on to some of the superior courts, and I think the better way would be to remove them altogether from my jurisdiction, as practically they are removed; for, at present, no such cases are sent to trial at quarter sessions, except under the direction of the Attorney General, and lately he has been directing all these cases to go to the assizes. I would leave only the ordinary class of offence to come to quarter sessions, such as ordinary larcenies, ordinary assaults, one man beating another coming home from a fair, or anything of that kind. We could get through those cases well enough.

3429. On the whole, you think that in ordinary cases the juries would do their duty fairly?

In ordinary cases I would leave trial by jury as it is. Your Lordships will see that there is a difficulty, supposing you were to suspend trial by jury at quarter sessions, who will you associate with the chairman. You cannot get another chairman with him, because they are all busy in their counties; you would have to associate the local magistrates with him, or one, or two resident magistrates. If you bring in one or two resident magistrates, it is rather, perhaps, a slight upon the local magistrates. So that it would be better, I think, to leave our court to deal for the present with only the most ordinary class of offence, and give us a summary jurisdiction of punishing, sharply, those cases where the process servers of our court were interfered with, or where the decrees of our court are set at nought by the retaking possession, after service of an ejectment decree, or anything of that sort.

3430. But you would leave the more serious offences to be tried in the manner in which they are tried now, that is to say, they should be sent on to the assizes?

Yes. Of course it is another question as to whether it is desirable or not to suspend trial by jury there. My own belief is that it is absolutely necessary. I think the two cases, to which I have called your attention just now, show it.

3431. Lord *Emly.*] Those cases of failure of justice were at the assizes?

They were; and I ought to have stated that in each case, particularly in the case

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case of the men taken in the fact, there was a cheer in court when they were acquitted, and the men were received with a perfect ovation through the assize town; they were cheered through the assize town; and after leaving the court-house, I heard some of the people say, speaking of the jury, "They dare not convict them." That was at Tralee, before Judge Lawson.

3432. *Chairman.*] You have heard some evidence which has been given with regard to the jurisdiction of local magistrates; is that a point upon which you would wish to make any suggestions to the Committee?

I should be inclined to increase their jurisdiction a little. There is one class of offence as to which I would increase their jurisdiction, and that is riot. There are a great many cases of riot where there has been a great deal of intimidation, but no actual damage; and I would give the local magistrates the power of dealing summarily with cases of riot, and I would increase their power of punishment in such cases.

3433. They are able to impose six months' imprisonment in some cases of assault, are they not?

Yes, and I would give that in cases of riots. If once you send forward a case of riot, there are so many people about, and every person taking a different view, and every person swears so queerly at the assizes, and the constitution of the juries at present is so unsatisfactory, that you can scarcely ever look with confidence for a verdict. I am one of those who look upon the certainty of punishment as being a much greater deterrent than its severity. If the punishment was certain, as it would be under such circumstances, I think you would have fewer of such cases in the country.

3434. Local magistrates make it a rule, do they not, never to deal with matters in which a question of title arises?

They cannot. Their jurisdiction by statute is excluded the moment a question of title arises.

3435. Does that have the effect of excluding from their jurisdiction offences with which it might be desirable that they should deal?

It may incidentally; but at the same time I should be sorry myself to make any alteration there, for you would then get questions of title discussed and decided in an unsatisfactory manner, having regard to property.

3436. Then the principal addition you would make to the jurisdiction of local magistrates would be that of riot cases?

Yes.

3437. Are there any other additions which you would like to make to their jurisdiction?

At present they can try assaults, but if the assault is accompanied by actual bodily harm, a breaking of the skin, that is supposed to exclude it from their jurisdiction. In cases where the assault has been followed by breaking a man's head I would leave it to their own good sense as to whether they would deal with it, or send it on.

3438. Earl of *Derby.*] Have they not the option of proceeding upon the minor charge?

They can do so. In the counties with which I am acquainted there are circulars in the hands of the petty sessions sent for their guidance from time to time, from the law officers of Ireland, and they have a circular directing them to send on these cases for trial; so that in point of fact where they do punish for the minor offence they really are going behind the circular that is in their hands.

3439. Then, in order to make an alteration of the practice in that respect, no alteration of the law would be required?

No.

3440. *Chairman.*] But with regard to riot cases, an alteration of the law would be necessary?

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I suspect it would, for that at present does not come within their summary jurisdiction.

3441. Lord *Tyrone*.] I understand you to say that you consider trial by jury ought to be suspended?
I fear so. I see no help for it; not generally through the country, but I would give a power to the Executive Government in certain districts, and for a limited period, to suspend it.

3442. Do you mean the Attorney General by the "Executive Government"?
That is a matter of detail which I do not feel competent to deal with; but it should be the Lord Lieutenant, the Privy Council, or the Attorney General.

3443. Supposing that something short of that was considered necessary, do you think there would be any advantage in adopting a proposal made, I think, by Mr. Hamilton to-day, of making it a *sine qua non* that a certain number of special jurors should serve upon any jury?
I do not see how that is to be done. The principle of Lord O'Hagan's Act is selection by ballot; and no matter how many special jurors you may have on the panel, their names must be thrown into the ballot box, and it may be that not one of those names would come out.

3444. But would it not be possible to alter that?
Not unless you changed the system of selection by ballot.

3445. *Chairman.*] If Lord Waterford's suggestions were carried out, would it be possible to ballot for, we will say, the names of three or four members of the jury from a separate list?
Quite so; you should have separate lists and separate ballot boxes, but that would require a change of the law.

3446. Lord *Tyrone.*] Have you ever considered whether a change of venue might be considered an improvement?
It would be under ordinary circumstances; but starting from my point of view, I do not see the advantage of a change of venue, unless you find a venue free from the disturbing influences to which I have referred. It may be, of course, as was said here earlier in the day, that you may, by sending cases, say from the South of Ireland to Ulster, do it; but that would be bringing about a bad state of things, for you would be raising the question of religion, and sending men from the Roman Catholic south to be tried in the Presbyterian or Protestant north. I am not saying that it would not be attended with good results, but that it would be dearly purchased. Then, if you sent them up to Dublin, the Dublin jurors, from all I hear, have at present more than they can do; their duties are extremely onerous. The mercantile men in Dublin are complaining very much indeed of their present duties in the jury box.

3447. I suppose you never thought it possible to change the venue from the country altogether?
No, never; that has never occurred to me.

3448. With regard to the class of jurors, you think that it would be an advantage to improve their class as much as possible, and to reduce the power of challenge?
Of peremptory challenge.

3449. Do you think that it would be an advantage to put the sons of special jurors and respectable people, who were not rated in the county, on the jury?
As far as I know, the sons of special jurors are young gentlemen engaged in professions, and some are in the army; but the special jurors have not got a staff of sons in the county waiting to be called as jurors, and I do not think that you would get many of them. Nowadays young men have to look out pretty sharply and study for a profession, and they do not remain at home; and I do not think that those who remain at home would improve the panel much.

3450. Then you do not see any means by which the class of jurors could be improved?

I think

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I think not by what is called a fancy qualification. I have turned that over a good deal in my mind, and I have never been able to hit off a fancy qualification which would approve itself to my mind.

3451. Lord *Ardilaun.*] Would you reduce the exemptions?
I do not know of any that I would reduce, speaking from memory.

3452. *Lord Privy Seal.*] I gather that you do not think that there are many persons in an Irish county who would be well qualified to act as jurors, and who do not come within the present qualification?
I do not.

3453. Do you not think that there is much to be done in that direction?
I do not.

3454. Do you think there is any change for the better that might be made in the mode of challenging jurors from cause shown as distinguished from peremptory challenge?
The present challenges for cause are very fair.

3455. Is there a convenient mode of challenging for cause?
Yes, the present challenges for cause are for four reasons, as given in our law books, and perhaps you will not consider me pedantic if I read the Latin. The first cause of challenge is *propter honoris respectum;* for instance, if a Peer is called, he is challenged on account of his station. The next cause is *propter defectum;* supposing that the man's intelligence is deficient on the ground of insanity, or something of that kind. Then the next cause is *propter affectum;* that is to say, he does not stand indifferent, but is for some reason biased in favour, or has expressed an opinion with regard to the case. The next cause is *propter delictum,* on account of infamy, if he has ever been convicted of felony, or perjury, or forgery.

3456. I suppose that the *propter affectum* would cover a great deal of ground?
A great deal of ground. In each of those, if a man is challenged for cause, the challenge is tried by jurors called triers.

3457. Do you think that it would be possible to leave that simply to the judge, instead of resorting to that cumbrous process of the triers?
I think that would be an improvement.

3458. You see no objection to that?
I see none.

3459. When you tell us that you are afraid that nothing short of suspension of trial by jury would cure the evils that we have heard so much of at present, do you say that upon the supposition that the present state of things in Ireland is going to last for some time longer?
It is on that supposition. Of course it would be out of place here for me to state the reasons why I believe it will last

3460. At all events, it is on that assumption that you give that advice?
It is. It is very extreme advice to give, and it is only applicable to a very extreme crisis, which I believe exists at present.

3461. And it is on the assumption that that crisis is likely to last for some time longer?
It is on the assumption that the crisis is likely to last for another year or two certainly, or more; at least, I do not see that it is possible that it can come down. It will take more than that time to settle the judicial rents.

3462. But your other recommendations of reform in the Jury Laws would apply to any time?
To any time.

3463. *Lord President.*] You propose that in certain districts trial by jury should be suspended, do you not?
That the Government should have the power of suspending it.

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3464. Not on the motion of the Attorney General?
No; that the Government should have the power of suspending it. I look upon the Attorney General as a public prosecutor, and I think it undesirable that the public prosecutor should be the man to do it.

3465. You made some suggestion that the grand jury at quarter sessions should be dispensed with; would you wish to extend that recommendation to the grand jury at the assizes.
I myself do not see the object of a grand jury in Crown cases at the assizes.

3466. No more than at quarter sessions?
No more than at quarter sessions. Of course there must be a substitute for them, and I assume that the substitute would be that no case should be tried without the *fiat* of the Attorney General, and that when once he has given his ruling upon a case, as he does at present, that a trial ought to take place, it should take place.

3467. Is it a very rare thing that the grand jury finds no true bill?
A rare thing.

3468. *Lord Privy Seal.*] At sessions?
It is rare at sessions.

3469. *Lord President.*] Have you ever compared the Irish with the English system in that respect?
I have not; but in the 15 or 16 years that I have been sitting as chairman of quarter sessions I can only remember six or seven cases in which bills were ignored.

3470. *Chairman.*] When the grand jurors conduct their investigation into the case, do they examine the accused or his witnesses?
No. The bill of indictment is sent up with the names of the witnesses for the prosecution on the back.

3471. *Lord President.*] The system is the same in Ireland as it is in England with regard to that?
Yes.

3472. *Chairman.*] Therefore, their investigation is really an extremely partial one?
It is an extremely partial one, and they have not the advantage of seeing the depositions, unless one of them happens to be a magistrate who has dealt with the case before it comes into the grand jury room. They get "John Thomas" or "John Brown" on the back of a bill, and they have to ask, "What do you know about this case."

3473. And yet it is upon an imperfect investigation of that kind that the grand jury are called upon, so to speak, to review the proceedings of the magistrates, in the first place, who have committed the prisoner for trial, and of the Attorney General, who has fiated the trial?
Yes.

3474. *Lord President.*] And you base your recommendation upon the fact that the Attorney General directs these prosecutions, whereas in England there are no public prosecutors?
Exactly.

3475. You cannot, I suppose, give us the number of the bills ignored by the grand juries at the assizes?
For the last four years I have had the honour of serving on the grand juries of my own county, and during those four years I do not think we have ignored five cases; five would be the outside, certainly.

3476. *Lord Privy Seal.*] Have you ever known or heard of any popular pressure being brought to bear upon the grand jury at quarter sessions for the purpose of inducing them to prevent a trial by ignoring a bill?

No,

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No, I have not heard of it; but my attention has been called to a canvass of the petty jury panel on behalf of a prisoner, where men's houses have been visited at night; I have no knowledge, direct or indirect, grand juries having been tampered with.

3477. *Lord President.*] You recommended that the court of quarter sessions should have some summary power for punishing for contempt of court and certain offences, and you instanced assaults on process servers; are there any other offences that you would include?

Where land has been retaken under a decree of ejectment. At present, unless the sheriff takes up the possession of the land and leaves a garrison in it, it will be retaken at once. That ought to be looked upon as a gross contempt of the court out of which the writ came, and I certainly think it would not be at all straining the constitution to make that offence summarily punishable.

3478. Are there any other cases besides that?

Those are the only cases that occur to me at present; the interference with our process servers and the interference with the execution of our judgments. That would cover a good deal of ground; that would cover the rescue of cattle.

3479. As regards the offences, are they in all these cases cases of assault?

The rescuing of goods taken under a civil bill decree is a misdemeanour by statute, but it is not always possible to get a conviction.

3480. Lord *Inchiquin.*] Even before this agitation commenced you found that the jury system had broken down?

I did not go that length; I said I do not think that anyone could fairly object to it.

3481. Do you think that it has not broken down, even in agrarian or assault cases?

We have very few agrarian cases coming before us, and the jury system worked fairly well; of course it was not perfect, but I did not see anything that would justify such a reform as interfering with trial by jury.

3482. Then this recommendation of the suspension of trial by jury would only be temporary?

Only temporary; only during the continuance of this abnormal state of things.

3483. With reference to what Lord Waterford asked you about special juries, it was suggested by one of the witnesses that there should be, in these special cases, a special jury called, composed entirely of special jurors; do you think that that would be desirable in the agrarian cases?

I am afraid that the special jury panel is not large enough to give what is called the long panel. It might be large enough in some counties, and then, of course, there should be an application made to have the case tried by a special jury.

3484. Especially if the right of challenge was limited?

Yes.

3485. Lord *Ardilaun.*] I did not understand you to say that you were in favour of doing away with the grand jury at assizes?

No, I confined my observations about the grand jury to quarter sessions. I was asked by a noble Lord about assizes, and I was obliged to say that my reasoning would apply to that.

3486. Was there not a case the other day, in Sligo, where a grand jury ignored a bill against the constabulary, where a petty jury would probably have found them guilty of murder?

I would not have such a possibility, because, if I removed the grand jury, I would not allow any man to be put on his trial except under the *fiat* of the Attorney General. I would put the law officers of the country in the place of the grand jury, which, with the best intentions, must be very perfunctory.

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3487. But what you point to at present is the grand jury at quarter sessions?

Yes; the other is outside my functions, and I wish to confine my evidence to my own court, and what is passing before my own eyes.

3488. Lord *Emly.*] Do you think it would be desirable, in such cases as you have mentioned as occurred in Kerry, that a power should be given to the judge to refuse such iniquitous verdicts?

I certainly think it would be desirable.

3489. And it does not occur to you that there would be anything objectionable in that?

It would be a very great interference with trial by jury, for it would be going behind it.

3490. But still you think that, under the circumstances of the case, that would be a thing that would be desirable to be done?

Under existing circumstances, certainly.

3491. Does it occur to you that the simplification of the oath might effect the consciences of the jurors beneficially?

It would be desirable to remove every possible ground of excuse; but I suspect that most of them understand it well enough.

3492. Duke of *Marlborough.*] I think you stated with reference to the proposal to do away with grand juries at quarter sessions, that by doing so a large number of names would be set free who might form the list of petty jurors, but did you not also say, that the grand jury is taken from the list of special jurors?

It is.

3493. Then they would not, in any case, form part of the panel of the petty jurors?

They would be also on the panel. The special jury list is for the trial of civil cases; but it does not follow that they would be excluded from the long panel of the county.

3494. Your experience, I think previously to 1878, was in Leitrim, was it not?

Yes, I was chairman of Leitrim.

3495. You stated just now that it was the practice at present, in consequence of the present state of things existing in the county, for the Attorney General to transfer agrarian cases, that would naturally be tried before your court, to the assizes; would you see any objection to giving the Attorney General an equal power to transfer cases, in which he thought justice would miscarry, from the assizes to a special commission of judges?

That is a point of view that never occurred to me before; but I think it is a very valuable suggestion, and one which deserves serious consideration.

3496. The idea has been thrown out by various witnesses, that a commission of judges might be appointed by the Executive in certain cases where it might be thought that trial by jury would not give effect to the proper administration of justice, and in those cases, if a commission were sent down subsequently to the assizes, cases might be reserved by the Attorney General, and tried before the commission after the assizes had been concluded?

When I took the liberty of suggesting the suspension of trial by jury, I ought to have said that I pre-supposed the constitution of a special court of two or three judges. I have not taken into consideration the other question, viz., that the Attorney General should have the power of removing cases to that particular tribunal; but I think that it would be almost a corollary to the creation of the court.

3497. And you think that is a plan which might work well and satisfactorily?

Yes.

3498. Lord

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3498. Lord *Emly.*] But if unfortunately very extreme remedies had to be resorted to, would it not be an improvement upon the suggestion of the Duke of Marlborough if the Attorney General had the power of bringing those cases before the Court of Queen's Bench, and that after a solemn investigation before the highest tribunal in the land, an order should then be made that they should be tried before two or three judges?

Those motions in the Court of Queen's Bench involve a great deal of waste of time and an immense amount of oratory; and my notion is, that the speeches published on those occasions very often do a great deal of mischief. I do not see much advantage to be gained by those motions, and I think it would be better to leave it to the Attorney General.

3499. Duke of *Marlborough.*] If those cases went before the Court of Queen's Bench it would involve, in fact, a double trial?

Yes, and double expense.

3500. Lord *Emly.*] Does it not strike you as rather a strong thing that the public prosecutor should be the person to decide so very serious a question?

At this moment he has the power to say who is to be prosecuted and who is not. All the cases are sent up to his office, and he writes the words "Prosecute" if the cases are to go on.

3501. But we are speaking, of course, of the suspension in any particular case of the right of trial by jury; I asked you whether you did not think that if so extreme a thing had to be done, it ought to be done in some very solemn way?

I intended to guard myself, and I thought I had done so by saying that I would leave the function with the Lord Lieutenant of Ireland or with the Privy Council, or with the Executive Government, and not with the Attorney General himself, simply because he is the public prosecutor.

3502. Duke of *Marlborough*] But he already exercises the discretion of transferring a case from your court to the superior court of the assizes, where he thinks that a conviction may be more likely to be obtained?

Yes.

3503. *Chairman.*] You receive that suggestion of his Grace's favourably; but until it was made, I understood you to be rather in favour of cases into which these disturbing elements enter being removed for trial to the assizes, and being there tried without a jury?

I presupposed another judge being associated with the judge of assize. I should have called attention to that. I never intended to recommend (and it was an error on my part if I have done so) that one judge should try the cases.

3504. Duke of *Marlborough.*] But of course, if a commission was constituted for the purpose of trying the cases, that commission could not sit at the same time and concurrently with the assizes court; it must sit after the assizes?

Yes.

3505. Therefore it must be either by the authority of the Attorney General or of some other portion of the Executive that the cases where it was anticipated that a miscarriage of justice might take place would be transferred to this special commission?

Yes.

3506. *Chairman.*] And you rather lean in favour of a specially-constituted tribunal *ad hoc* in preference to making such cases triable by the existing tribunals divested of the assistance of a jury?

Certainly.

3507. Lord *Tyrone.*] One witness whom we had before us some time ago suggested that a different class of jurors should be summoned to the quarter sessions and to the assizes; that the ordinary petty jurors should attend at the quarter sessions, and that a superior class of jurors should do the work at the assizes; do you think that there would be any advantage in that?

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I do not quite see how it is to be done, because once a year we make out the jury panel for the county, and there is only one jury panel, and that is the jury panel for all purposes.

3508. You would not propose to alter that plan?
I would not; I am sufficiently jealous of my own court that I should like to have as good a jury there as anywhere else. I should not be at all satisfied to be put off with an inferior grade of jurors.

3509. *Lord Privy Seal.*] Do you think that the number of special jurors generally would be sufficient to supply a definite number, say three or four, to act upon every petty jury?
Of course you will understand that I have never gone through the numbers, but I believe it would.

The Witness is directed to withdraw.

Mr. EDWARD CORCORAN, is called in; and Examined, as follows:

3510. *Chairman.*] I believe you are Clerk of the Crown for the Queen's County?
Yes.

3511. How long have you held that office?
Nine years; and I have been sub-sheriff for one year. I have been a practising solicitor for 30 years. I have lived in Dublin for the greater part of that time; but I have had a great knowledge of the country for the last 40 years, and of that county in particular.

3512. Have you any observation to make to the Committee as to the manner in which juries have conducted themselves recently?
I must differ from some of the gentlemen whom I have heard. I think the present jury system a very fair one, and I think they are a very intelligent class of men, at least in my county. I have a return here for the last 17 years, showing the number of cases tried, taken from the Crown book, where the jury agreed or disagreed, and where they found verdict of guilty, which might be of some importance. I can hand it in to your Lordship if you care to see it.

3513. Will you state the general effect of those figures to which you refer?
I think that the present juries, as well as I can find out, have always given very fair verdicts. At the last assizes there was one case of what they call Boycotting, and Mr. Justice O'Brien charged the jury to acquit the prisoner, which they did. He said that there was no case made out. There was another case at the previous assizes, at which Judge Ormshy presided; it was for intimidating a process-server. The judge (Ormsby) charged for an acquittal, stating the Crown had not made out a sufficient case. Another was for taking forcible possession of a farm; two men thought that they had a right to do so; and the prisoners pleaded guilty, as I believe, fearing a trial by jury. There were only three cases in which the juries disagreed at three different assizes lately. One of them was a case in which a bank clerk had embezzled money of the Bank of Ireland, and the jury disagreed. The judge charged for a conviction, and, in fact, had the jury locked up for a considerable time, and then he had to release them. This gentleman had a large connection in the county, and there was a great deal of local influence brought to bear; but I believe the jury considered that he intended to refund the money, that he had only borrowed it in fact, and three times they disagreed. Then there was a case against 10 or 12 young men for burning the late Mr. Justice Keogh in effigy, after the Galway Election Petition there, and the jury in that case convicted them. In 1874 a Mr. Whitford was fired at and wounded, he having dispossessed some tenants. A common jury of mostly farmers awarded him compensation on the hearing of the traverse of the grand jury presentment in the sum of 1,200*l.* They were all men of the small farmer class on the jury, but they convicted those young men, and they got four months in gaol, with hard labour.

3514. Do

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3514. Do you draw any distinction between the conduct of the juries in cases into which agrarian considerations enter and their conduct in ordinary cases?
In my county we have not had many of those cases, in my experience at all events. There was a very extraordinary case tried in 1873, eight or nine years ago. A man was tried for murder, and the trial lasted during July, August, and September, and the jury convicted this man after seven weeks. I know that jury were all small farmers, holding 30 or 40 acres of land, with the exception of one, who was a shopkeeper. They found him guilty, and they were highly complimented by the late Chief Baron Pigott; he said they were most intelligent.

3515. I understand you to state that you are satisfied, as far as your own personal observation goes, with the conduct of the juries, but that up to the present time they have not been called upon to deal with cases into which any very disturbing element may be considered to have entered?
Precisely.

3516. Are the common juries composed largely of any one class?
No; they are principally Catholics in my county.

3517. But I am not speaking of denomination so much as of profession?
They are all small holders of land, and of a much more intelligent class than I think in many other counties in the west of Ireland, or other places that I know something of; and latterly they are all much better educated than they were years ago. In fact, the people in my locality much prefer sending their children to the National School to getting them employed during harvest, no matter what wages you give them.

3518. Lord *Tyrone.*] I understand you to say that you have no objection to the present system of trial?
No, I have not.

3519. You have found it work satisfactorily?
So far as my county is concerned, I consider that one man holding 1,000 acres of land, and another 50 acres, does not make the slightest difference; you can have just as intelligent a man holding 20 or 30 acres of land as a man holding 1,000.

3520. Then you would be prepared to leave things exactly as they are?
I would.

3521. *Lord President.*] Your county has been generally a tolerably quiet county, has it not?
It has.

3522. Does your experience extend beyond Queen's County?
I know a good deal of Kilkenny.

3523. Do you think that juries have worked satisfactorily in Kilkenny also?
I do.

3524. You have not seen any difference since the recent excitement?
No. There was a case mentioned here, sent from Kilkenny the other day into Dublin for the murder of Mr. Boyd, where the jury acquitted the prisoners. The venue was changed to Dublin by the Crown, and the Dublin jury acquitted the two prisoners.

3525. Lord *Inchiquin.*] You have no experience in Munster?
No, I have not.

3526. Lord *Emly.*] The only two agrarian cases that have come under your notice, I think, were the two in which there were acquittals, under the direction of the judge?
Yes. A case occurred close to my place the other night. A horse was shot; the person it belonged to is a Land Leaguer, and the people all subscribed for such evidence as would ascertain the person who was guilty. There was no cause assigned; it was done at about 11 o'clock at night.

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3527. *Chairman.*] Are there any other observations on this subject which you wish to address to the Committee?

I think not, except that I could show you that you could not go back on the old jury system. I could show you here a tenant of your Lordship's, who, I believe, holds very extensively under you, a magistrate of the county, who was never on the special jury list until I put him on. There were a number of bailiffs, or under agents, who were on, and I called the attention of the gentleman whom I acted under as high sheriff to this, and he said that it was monstrous, and that he would leave it to me to put on such names as I thought proper, provided that I did nothing unfair, and so I put on one against another. There were, I suppose, 40 men of that class, who had never been on a jury until the year when I was sub-sheriff. The system at that time was a monstrous one. There were 48 special jurors summoned, and there were 20 of the grand jurors among those 48; that reduced the number to 28, and they were all friends of the sheriff.

3528. Therefore you express yourself strongly in favour of the principles of the change introduced in 1871?

I do. I can only speak for my own county; but in the West of Ireland I believe they do not agree with me.

The Witness is directed to withdraw.

Mr. JAMES C. MACDONNELL, is called in; and Examined, as follows:

3529. *Chairman.*] I BELIEVE you are sub-sheriff of the County of Mayo?

Yes, I was up to February last.

3530. How long have you held that office?

Fourteen years.

3531. The preparation of the jury list forms a part of your official duty, does it not?

Yes.

3532. That duty, since the passing of the Act of 1871, has been, to a great extent, a mechanical duty, has it not?

Entirely.

3533. As to the question of procedure, would you state whether the present arrangement for alphabetical rotation of service is one which works in a satisfactory way?

It works in a regular way, because the way is defined in which it is to work; but that it produces good jurors I do not at all admit.

3534. Let us keep the quality of the jurors a separate question; you think that the present system under which the jurors serve, in alphabetical rotation, works fairly as between man and man?

Yes.

3535. You do not make any suggestions for the improvement of that rotation?

No.

3536. Then as to the quality of the jurors which it gives you, we shall be glad to hear your opinion?

I will deal particularly with Mayo, the county of which I have experience, and I should make certain changes in the rating qualification of jurors in that county. For instance, a dwelling-house of 6 *l.*, in the county of Mayo, is a qualification for a common juror. That I consider entirely too low.

3537. Was

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3537. Was that qualification reduced by the Act of 1876?
Yes, the jurors in town and country under the Act of 34 & 35 Vict. was a qualification of 30 *l.* The present qualifications are, jurors in towns, 6 *l.*, as common jurors; in rural districts, 40 *l.*; freehold qualification, 10 *l.*; leasehold qualification, 20 *l.*, for common jurors.

3538. Then qualification which you are inclined to quarrel with is the 6 *l.* qualification?
It is one of the qualifications that I am inclined to quarrel with. I consider that 6 *l.* is entirely too low; and I consider that excluding spirit dealers having a qualification not up to 15 *l.* is a mistake; I would reduce that to 10 *l.*, and thereby bring on very intelligent men who are left off, and who are quite capable of discharging the duty.

3539. Of what class are your Mayo common juries usually composed?
They are composed of almost all classes, except those that are not disqualified by the Act of Parliament. For instance, in making out the common panel, which must be first prepared, every class represented; for instance, a baronet, magistrates, shopkeepers, farmers, merchants, every class is to be found on the common jury list.

3540. But which class predominates?
The agricultural class; the farming class.

3541. Are you able to tell us roughly, to what extent?
Not with accuracy; but a large majority would be of the farming class.

3542. Do you find that the minority who are not farmers, take their fair share of service on the juries?
Yes, I do.

3543. Does the baronet take his share?
On the special juries, but not on the common juries.

3544. How comes it that the better class of jurors do not take their fair share of service on the common juries?
The grand jury at assizes absorbs many of them; and attending as a grand juror at the assizes, exempts a gentleman from attending as a petty juror at the same assizes; he cannot try a prisoner against whom he has taken a part in finding a bill.

3545. Are there any other causes which keep the minority who are not farmers out of the box?
There are a great many gentlemen who do not like to be associated on common juries with the class of people who are generally on them. Then there is the special list of 48 names, which has to be made out at each assizes, and they are not eligible to serve on Crown cases at those assizes; the minority of cases, of course, are special jury cases, and that is caused to a great extent by the requiring of those special jurors to attend as grand jurors at the quarter sessions.

3546. Do you find that the exercise of the defendant's right of challenge also tends to keep persons of this class out of the jury?
The defendants right of challenge in misdemeanour cases, extends to six jurors, unless he can show cause beyond that number, which he seldom does; he generally has to confine himself to the right of six peremptory challenges, inasmuch as he is not able to show cause against respectable men.

3547. In cases of felony the defendant may challenge 20 without cause, may he not?
Yes; I think that keeps a great many eligible men off the jury.

3548. Are you able to state to us your impression as to the way in which the common juries in Mayo have been doing their duty of late?
Very unsatisfactorily, in many cases.

3549. You have at present opportunities of observing that?
Yes.

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Yes. I fancied that I could discover at the recent assizes somewhat of an improvement, but it is not at all so satisfactory as could be desired; nor do I think that the rating qualification will ever lead to a satisfactory state of things, inasmuch as you will always find a man sufficiently rated, and at the same time not a desirable man to expect justice from as a juror.

3550. Can you conceive any other basis upon which the qualification for service on the juries might be founded?
No, the only alternative that I know is by selection; and then the question is to what tribunal you would entrust the selection.

3551. But speaking as a sub-sheriff, should you be very anxious to have the old discretion of selecting the jurors handed back to you?
I would be very anxious not to have it. It was more a source of responsibility and invidiousness than anything else.

3552. It would be a responsibility which you would feel to be almost intolerable?
It would be a responsibility that would be disagreeable. If I selected men by reason of their being proper respectable conscientious men to attend on juries, they would much rather I would leave them off and save them the trouble of attending; and consequently there would be an amount of dissatisfaction that I did not exercise my discretion to meet their wishes.

3553. Do you think that public opinion in Mayo would acquiesce in any one person having that amount of responsibility thrown upon him?
I think that public opinion would be against it.

3554. With regard to the misconduct of the juries, has that been in any particular class of cases, or in all cases?
In cases having reference to assaults on process servers; cases having reference to forcible entries into farms, possession of which had been taken under ejectment decrees, and cases of rescues under civil bill decrees. Those are the three classes of cases that have struck me most forcibly.

3555. Does it appear to you that there is any reasonable prospect of a common jury in Mayo finding a verdict in accordance with the evidence in such cases?
It is possible that such a thing might occur, but it would be a very rare occurrence.

3556. Can you give the Committee instances in which juries have convicted in cases of that kind during the last 12 months?
They were common juries, no doubt; but whether there were some jurors from the special list on them I am not prepared to say; my impression is that there were some jurors from the special list.

3557. In the particular cases which you have in your mind, the common jury included jurors who had the special juror's qualification?
Precisely so.

3558. By accident?
No; by the working of the Act; by the ballot.

3559. May I infer from that that you think the presence on a common jury of two or three individuals of superior qualifications would lead to the remainder of the jury doing their duty in a more satisfactory manner?
I do. I consider that the presence on the jury of three or four, say one-third, jurors having the special juror's qualification, would be productive of good results amongst the ordinary common jurors.

3560. Has there been a marked alteration in the behaviour of the juries since the recent agitation came into existence?
Yes.

3561. That agitation is very deep seated in Mayo, I believe, is it not?
Yes; it had its origin, I may say, there. It is not much more deeply seated there

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there now than it is in other places, but I regret that it is very deeply seated there still.

3562. Does it touch persons of every class and profession?
No. For instance, managers of banks, and medical men, and civil engineers are above that sort of thing; it does not reach them.

3563. But persons of every class and profession in the agricultural community are?
Indeed there are some to be found of every agricultural class mixed in it.

3564. Are most of the farmers connected with the Land League organisation?
The great majority of the smaller ones are, and many of the larger ones.

3565. Would there be every chance that amongst the 12 persons whom you would find in the box some were connected with that organisation?
There would always be some, under existing circumstances.

3566. We should like to know your opinion as to a point about which we have received a good deal of evidence; I mean the effect of the exercise of the right of challenge allowed to the prisoner, who has 20 challenges without cause; do you consider that that number is unduly large?
It is unduly large, and he exercises it in the fullest way, in the hope of exhausting the jury panel and not coming to a trial when he feels himself guilty.

3567. But if, as you stated to us just now there is to begin with on the jury list a small minority of jurors of the superior class, it follows that it is very easy for the defendant, by availing himself of his right of challenge, to exclude that minority from the jury box?
Under the present state of things it is; but what I would suggest would be that, in empanelling what is called a common jury, it should be ensured that there should be at least one-third of the jurors from the special jury list upon it. For instance, if a prisoner challenged one special juror, I would call another from the box in which the special jurors would be balloted for; to ensure that, I should always have at least one-third of special jurors on the jury without being affected by the right of challenge exercised by the prisoner.

3568. Do you think that there is anything to be done in the direction of strengthening the representation of the more educated and intelligent classes by giving a juror's qualification to persons who have not got the rating qualification which the Act now requires?
I think not, because I think that the class of gentlemen to whom you would give it, those who have not the qualification, really have no business in the county. A special juror's son, for instance, is generally engaged in farming or in commerce of some description that would give him the necessary rating qualification.

3569. Retired officers of the Army, or Navy, or Militia, for instance?
There is no certainty of such a man's remaining in a particular district; and when you have rated him, and think that he is available, he is gone elsewhere Police pensioners are very much in the same way; they take farms and give them up again. I do not think that would come to much in the way of permanent advantage.

3570 Lord *Tyrone.*] You say that you would limit the right of challenge; has it ever struck you to what extent you would be prepared to limit it?
I think that, in felony cases, a peremptory right of challenge of ten jurors, throwing it upon the prisoner or his counsel to show cause for any others, would be quite sufficient; and I think that, in ordinary misdemeanour cases, I would give no right of challenge whatever, except for cause. I saw, at Castlebar, on Saturday last, an ordinary case of misdemeanour. The full right of challenge was exercised by the prisoner, and in speaking casually afterwards to his attorney, I asked, in the course of conversation: "Why did you object to so and so?—Oh, the objection to him was that he had no land." It was a prosecution for taking forcible possession of a house, possession of which had been given under an ejectment decree by the sheriff. The only objection to the juror was that he

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did not know anything about him; that is, that he did not know him to be a sympathiser.

3571. In preparing the panels, I suppose you have very great opportunity of judging what is the number of jurors upon a panel in whom you would have confidence if you were going to bring a case before them?
Certainly.

3572. Can you give us any idea what number of jurors there were on your last common jury panel, for instance, that would be likely to give a fair verdict according to the evidence?
I should say from my experience of former occasions that there would not be more than probably one-third of the men on the panels that would be men in whom I should have confidence that they would find a conscientious verdict.

3573. How many men do you have on the panel altogether?
At the assizes, generally, we have a panel of 200.

3574. And you think that on a panel of 200, there would be one-third in whom you would have confidence?
Yes, that is if they answered they would be on the panel.

3575. That is your experience in Mayo?
That is my experience in Mayo.

3576. I understood you to say that you adopted the proposition that was made just now of putting special jurors on the panel?
Certainly.

3577. And making it a necessity that no matter how many were challenged there should still be one-third special jurors?
Most certainly; I would have two ballot-boxes, and I would ensure that at least one-third of the special jury panel should answer to constitute a jury.

3578. In the present state of the country, I suppose that would be with a view of getting a disagreement?
Certainly a disagreement rather than an acquittal; but I should hope that that one-third would have an educating effect, and lead the others to give a conscientious verdict, and to feel the obligation of their oaths.

3579. Having considered the subject a good deal, I have no doubt, have you anything to propose besides that which you think would be for the improvement of the jury laws?
I would dispense with grand juries at quarter sessions altogether, as Mr. Hamilton and the other gentlemen propose, as being perfectly useless and a waste of power that would be useful for the formation of common juries. In the county of Mayo, for instance, there are four sessions held in Castlebar; that requires 96 grand jurors to be summoned each year. There are four quarter sessions at Ballina, and that requires the same. That absorbs nearly the entire special list of the county, and the time of those men is completely thrown away; double work is thrown upon them for no object. I would not bring them as grand jurors to quarter sessions at all; I would reserve them as special jurors, at assizes, and mix them up with the common jurors for the purposes which I have already detailed.

3580. *Lord Privy Seal.*] Do you think that the amount of qualification in the county of Mayo could be raised without reducing the jury list to too small a number for the requirements of the public service?
I think it might be raised in many instances. For instance, that very low qualification of 6 *l.* I would remove altogether, and I would have no juror under any circumstances rated at less than 10 *l.*

3581. Is that 6 *l.* a house qualification?
That is a house qualification. That is unduly low, and brings every class of men into the jury box. I would get rid of that qualification altogether by raising it to 10 *l.*

3582. Would

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3582. Would you leave the general rating qualification for lands and tenements as it stands?

I would leave the special jury qualification as it is; that is to say, 50 *l.* in towns, and 70 *l.* in the country; I would not make any change in either the 50 *l.* or the 70 *l.* qualification. I think you would have a sufficient number of jurors leaving it as it is, with the exception of the six pounders. I am in favour also of reducing the qualification of 15 *l.* to 10 *l.* for spirit dealers in the towns. There are many competent men of property and position in many parts of Mayo who are now ineligible by reason of the value of their premises not being 15 *l.*, they having farms and other properties in the union.

3583. But do you consider publicans a very eligible class of jurors?

On the contrary.

3584. But you propose to reduce the publican's qualification?

From 15 *l.* to 10 *l.* At the same time that is a matter which might perhaps be left as it is. It is a thing that I would not be very sanguine about.

3585. Lord *Ardilaun.*] Do you think that the rate collectors do their duty well in ascertaining who are qualified as jurors?

I think there is a good deal of carelessness in a great many instances, and I have found a great many men returned by rate collectors and clerks of unions as jurors, who have been struck off as being incapacitated, by the revising barrister in former years.

3586. Are they paid by the number of names that stand properly upon the list, or are they paid by the number of names that they put upon the list?

They are paid by the names that are on the list.

3587. Whether they are right or wrong?

Whether they are right or wrong.

3588. Do you not think that it would be an improvement if they were paid by the names that were proved to be properly on the list?

Certainly; and it would be a very small penalty to attach to that neglect; they get 2 *l.* 10 *s.* for the first 20 names, and they get 1 *s.* per name after. Supposing that in the first 25 names were wrong, 5 *s.* would be a small penalty to put on the clerk of the union for a mistake of that description.

3589. Have you heard the rate collectors complain of a difficulty in getting information as to the occupiers of premises?

I have not; and from the facilities that they have to get information, I should not mind them if they did make such complaints.

3590. Then you would not put any penalty upon persons giving them false information, or refusing to give them information as to the occupiers?

I do not believe that the ratepayers give false information; in large towns, such as Dublin, such a thing may occur, but I am confining myself entirely to Mayo.

3591. Or in small towns in Mayo?

Even there I do not think it is so.

3592. Lord *Emly.*] What is the qualification for a petty juror in Mayo?

There are three or four different qualifications; the lowest rating qualification is 6 *l.* In the case of a person occupying a dwelling-house of the valuation of 6 *l.*, it qualifies him as a common juror.

3593. Can you tell us how many trials for agrarian offences there have been in the county of Mayo within the last year?

No, I cannot.

3594. *Chairman.*] I think that most of your evidence has been directed to the conduct of common juries in criminal cases?

Yes, entirely in criminal cases.

3595. Have you any means of knowing what the conduct of juries in civil cases generally has been?

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In civil cases at quarter sessions I think the conduct of the juries has been almost invariably bad. I differ from Mr. Hamilton in that respect. I think that juries in civil cases at quarter sessions are generally brought in by a party who is diffident about his case, and who is afraid that the chairman will not be deceived by him; as a rule, the findings of the juries at quarter sessions in civil cases have been directly in opposition to the charge of the judge. In civil cases at the assizes my experience has been that the juries do their work very fairly at the present time. Many of them feel that prolonging a case by a disagreement is generally a very serious injury to one, or perhaps both of the parties, by protracting the litigation.

3596. *Lord Privy Seal.*] How do you account for the difference of conduct of the juries in the two cases, at quarter sessions and at the assizes?

Because at quarter sessions the civil cases are in almost every instance decided by a judge without a jury. He, as the county court judge, decides the civil cases without the aid of a jury. A jury is brought in, as it were, to frustrate his decision, or to run counter to it. The judge having the juri-diction to try civil cases without a jury, when a jury is brought in it is for the purpose of running counter to what his decision would be likely to be; and my experience has been that the judge's opinion of the verdicts of juries in civil cases at quarter sessions has been thoroughly to disapprove of them. We have had two cases at the recent assizes on appeal, and the juries' verdicts were in both cases reversed by the judges. On either side the plaintiff or the defendant has the right of asking for a jury. For instance, if a shopkeeper brings an action against a railway company, if he feels that he has no real merits, or if he is afraid that the chairman would not have sympathy with him, because he was contending against a rich company, he might avail himself of the sympathies of a jury who would be much more likely to sympathise with him than with the railway company, and who would find against the railway company.

3597. *Chairman.*] Your point is that the man does not ask for a jury unless the case is one in which he wishes to appeal to class sympathies?

Precisely.

3598. And so by a process of natural selection you get bad verdicts?

Yes.

3599. *Lord President.*] It is not from want of intelligence that you distrust the juries, but from the influence which is brought to bear upon them?

Quite so.

3600. There are very few classes of cases in which you could trust a jury?

There are very few cases tried by juries at all at quarter sessions; but those which are so tried are unsatisfactory in their results.

3601. Lord *Ardilaun.*] Is it not the case at present in Mayo that there are many magistrates who are most unwilling to perform the duties which they would otherwise perform owing to personal risks?

Most decidedly.

3602. And who have been threatened if they performed their duties?

Within the last six months a magistrate, whom your Lordship knows, asked me if I thought he ought to attend the sessions which were coming on at a certain town near mine. I said, "Why not; have you not been in the habit of attending?" "Yes," said he; "but on this occasion there are three or four malicious injuries coming on for burning houses. I have a long family, and if I find in favour of the landlords, I do not know that my own house may not be set on fire the next day."

3603. Do you know the case of the policeman, Cross, where the magistrate who adjudicated was threatened, and has since been under police protection?

Yes, that is quite true.

3604. *Lord Privy Seal.*] Is it the case that some convictions in cases of riot or assault were obtained at the recent assizes at Castlebar?

Yes.

3605. What

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3605. What was the nature of the cases?
One was a case, from near Ballindine, of people going out at night and marching along for the purpose of taking possession of a farm. They had an affray with the police, and assaulted them, and the police struck one of them down and injured his leg. Two of the parties were tried at the former assizes, and the jury disagreed. One of them was found guilty of rioting, the other of common assault.

3606. That was a strictly agrarian case?
It was.

3607. *Chairman.*] Were there any exceptional circumstances about it which led to the better performance of the juries' duties?
I am not prepared to answer that, unless there may be some slight improvement in the existing state of things in Mayo.

3608. But there was nothing so far as you could see which took those cases out of the category of the ordinary run of agrarian crime?
No, nothing whatever; it is thoroughly agrarian crime.

3609. *Lord President.*] Was it not the case that at the assizes in 1880 there were some women and others convicted for attacking a process server?
Yes, a band of people, numbering something like 15, were indicted for attacking a process server between Westport and Lewisburgh. Baron Fitzgerald was the judge, and he gave them very severe sentences indeed, some two, some four, some five, and some as high as twelve months' imprisonment; and it is very remarkable that ever since that, in that district, the process server has been able to ride about on his pony to serve the processes, with a thorough immunity from anything like assault or violence.

3610. How do you account for that?
That the people have been read a very salutary lesson when they found that twelve months' imprisonment was the result of the infringement of the law.

3611. Lord *Ardilaun.*] Was sentence passed upon those men to whom you referred?
No, it is not passed yet.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned till Thursday next, at Twelve o'clock.

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Die Jovis, 21° Julii, 1881.

LORDS PRESENT:

Lord President.	Lord Silchester.
Lord Privy Seal.	Lord Penzance.
Earl of Derby.	Lord Emly.
Lord Inchiquin.	

The MARQUESS OF LANDSDOWNE, in the Chair.

Mr. MAURICE LEAHY, is called in; and Examined, as follows:

3612. *Chairman.*] I believe you are the Acting Crown Solicitor of Limerick?

I am Sessional Crown Solicitor for Limerick; county and city.

3613. I presume you have had considerable experience in preparing cases for the Crown as prosecutor?

Certainly.

3614. Will you state to the Committee, generally, your impression with regard to the conduct of the juries, so far as you have had experience of them?

In the county of Limerick, in which I happen to be Sessional Crown Solicitor, the jury system at present is, to my mind, working very badly in criminal cases where there are agrarian outrages complained of, and attacks on the police, and grievous bodily harm, assaults arising from faction fighting, which is very prevalent indeed, particularly in the eastern part of the county. In these particular cases it is very hard to get a jury at all to pay any attention to the evidence, and to give their verdict accordingly.

3615. In so far as other cases are concerned, you find no reason for complaint?

So far as cattle stealing and larcenies are concerned, and simple cases like that, there is not very much difficulty in getting a jury to give a fair and proper verdict according to the evidence; I think I might add that in civil cases also they give very fair verdicts.

3616. Then that would point to the conclusion that it is not from a deficiency of intelligence that the jurors fail to find proper verdicts?

Rather so; there are certainly some very unintelligent men on the jury; but, of course, they are to a certain extent carried away, more or less, by the more intelligent men who are on the jury.

3617. Are there any cases in which there has been recently a conspicuous miscarriage of justice which you would wish to describe?

There are two in particular; one is a case in which I was engaged myself from the very commencement, and therefore I know the whole facts of it. They are simply these; Lord Guillamore, who owns some property in the western part of the county of Limerick, was recently desirous of serving some tenants with writs of ejectment; I believe they were for non-payment of rent.

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For that purpose he sent a bailiff of his that he got directly from Dublin, and his under-agent, a gentleman named Mr. Collette, and they were assisted by some dozen police. They served some five or six ejectments on the first day; but they were unable to serve two. They came back two days afterwards to serve those two, accompanied by two policemen in coloured clothes. They went to the first house and effected service there; they then had to go across the country a mile or mile and a-half to the next house. When they went to this house they were met by a large crowd of people, principally women; perhaps some 20 or 30 women; and there were some 10 or 15 men with them. The moment they appeared, and when their business was known, without the slightest intimation whatsoever, the men and women simultaneously stripped the bailiff actually naked; they beat him and abused him in the most frightful manner that could be described. The two police that were with him, and Mr. Collette, did all they could to preserve the man, and prevent his being stripped, for decency's sake, and from being assaulted as he was, and ultimately they got him away. He had to go about four miles across the country to get protection. No sooner had he left than Mr. Collette, the sub-agent, who accompanied him, was likewise stripped of all his clothes and beaten in a most unmerciful way. I ought to tell you he had a revolver, and could have used it if he wished; but he did not, nor did the two police who had revolvers as well. When Mr. Collette was stripped and they were beating him in a most unmerciful way, they were about to attack some of the police, when some of the crowd said it was not fair to attack the police, but that they should give Mr. Collette enough of it. Immediately on this, one of the Catholic curates of the parish happened to come up, and after some to do he got the people to disperse, and they all went away. That case was brought to trial. I prosecuted the prisoners myself, and it took, I think, six days for the primary investigation. We brought up 13 of the accused parties. I proved my case with the evidence I had, which was that of Mr. Quinn, Mr. Collette, and the two policemen, and I made out a very strong *primâ facie* case. There were 13, as I told you before, accused, and it is a very singular fact that for each and every one of those 13 there were three or four parties brought up to prove *alibis*. However, the magistrates, as in duty bound, according to the case I made out, sent it on for trial at the assizes; it came on for trial at the recent assizes, and in consultation, the other gentlemen connected with the case and myself determined only to put seven, who were the ringleaders as we thought, on trial. We put them on trial; the facts were proved, as I am telling you, and it is a very singular thing, that in their defence, they proved the same *alibis* for each and every one of the seven that were put on trial, except one. They forgot to prove the *alibi* in that case, and this was very cleverly commented upon by the counsel representing the Crown, and although there was a most flagrant case made out against this particular man, putting aside the six others, still the jury, after being locked up for four hours, disagreed. If they had been disposed at all to give a fair verdict, to my mind, from the evidence I gave, I think they should have convicted; of course, if they believed the *alibis* they might have acquitted six, but certainly for the seventh man there was no case in the world for an acquittal or a disagreement. They should, to my mind, have convicted him. The case ended in that way after, I think, four hours' deliberation by the jury, from 5 in the afternoon until 9, and they were discharged without agreeing to a verdict.

3618. Was that a case which elicited any comments from the learned judge who tried it?

Yes, from Judge Barry; he referred to it particularly in his address to the grand jury.

3619. Did he refer to it as a case in which there had been a miscarriage of justice owing to the perversity of the jury?

He did not refer to it when once it was disposed of. He referred to it merely in his address to the grand jury in the first instance; but he did not refer to it afterwards when he was discharging the petty jury.

3620. What would be the qualification of the jurors who tried that case?

I happen to have the names here of the 12 jurors who served on that jury, and

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and I see they are rated in this way: one of them 100 *l.*, two over 90 *l.*, two over 80 *l*, two over 70 *l.*, two over 60 *l.*; if you average it, it will come to about 72 *l.*; and I may tell your Lordship on this question of the jury that I, as the sessional Crown solicitor of the county, of course have a very good knowledge of the jurors, and I took a very great interest in this particular case for the sake of justice, and I took particular care to try to get as good a jury as we possibly could I may tell you that Mr. Roche, the Crown solicitor, and myself, set aside about 25 or 30 before we got this jury, and I may say, during my experience as connected with the Crown, or even my experience connected with cases when I was merely a private solicitor, I do not think I ever saw a better common jury, to all appearance, than were in the box on that day; and it not only comes from myself, but I heard several people, police officers, resident magistrates, and others connected with the county, say they never saw a more intelligent lot of common jurors in that box before. We did our very utmost to try and get a good jury and bring home justice in the case.

3621. Are there any other special cases to which you would like to draw the attention of the Committee?

There is one other case in which I was directed by the Attorney General to prosecute a number of men last November at the preliminary inquiry, at a place called New Pallas; that was the case of Mr. Sanders, in which I also brought home the case very clearly. The accused were sent on for trial, and the result of the trial was that the jury disagreed. It is merely with reference to the question of intimidation that I wish to refer to this particular case. As in the case of Lord Guillamore, I got as many men from a different part of the country as I possibly could to serve on the jury. I found afterwards that 10 were for acquitting, and two for convicting, and the jury was discharged without giving a verdict. One of those two who it appeared was for conviction, told me some 10 days or a fortnight afterwards, that on that particular evening as he was going home to his part of the country, which was an entirely different part of the country to that where the outrage originated, he was met by several of the accused at the station, and threatened if he ever served on a jury again in Limerick, he had better beware of the consequences. I had that from the man himself, and a most respectable man he is. That was at the spring assizes; the jury disagreed; the case was brought on for trial again the other day, and how it happened I am sure I do not know, but the prisoners pleaded guilty, and they were let out on their own recognizances. I believe they were afraid to go to a second trial under the circumstances, for the case was really a very flagrant and a very clear one. That I believe may be taken to account for the fact that the learned judge who tried the case, got a very good idea of the character of the place and the locality.

3622. Lord *Emly.*] Do you mean the New Pallas district?

The sub-inspector of police, and also the head constable, were asked a question by the learned judge as to the state of the locality at present; this particular man was in the dock at the time, and both the sub-inspector and head constable gave very good account of the district, that is as regards its state just at present.

3623. But was it not only a few weeks ago that a large army went there?

The conduct of the people in New Pallas some weeks ago was most frightful.

3624. *Chairman.*] If the accused persons in this case would not stand a second trial it looks a little as if the probability was that another jury might have convicted them?

Exactly.

3625. Should you have shared that anticipation, or would you go so far as to say that the prospect of conviction in a case of that kind was remote?

I think if they had gone on their trial, the jury would have disagreed again, or the prisoners would have been acquitted. So far as I can say, my experience in the county of Limerick is, that a disagreement of the jury in the first in-

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stance is almost tantamount to an acquittal; for the second jury, when they come to try the case, say to themselves, as I believe, "The first jury disagreed, and why should we convict?"

3626. You have described the qualification of the jurors who tried the case to which you specially referred; was that an exceptionally highly qualified jury?
To my mind it was.

3627. From what class of life are the common jurors generally drawn in your county?
From farmers in the county of Limerick. I think, perhaps, it is only right for me to add that I do not think there could be a better jury than one drawn from the Limerick city jurors: they are quite distinct from the Limerick county jurors.

3628. Have you known of other cases where the jury have been canvassed or threatened?
I cannot say that I know of any particular case; but I know that previous to the sessions, or previous to the assizes, the friends of the accused generally try to make out, as best they can, who the jurors are that are about to serve. I do not know it of my own knowledge, but I believe there is a certain amount of canvassing among them.

3629. They have every opportunity, I suppose, of getting a copy of the panel?
Certainly.

3630. I suppose there would be some difficulty in keeping back from the public a knowledge of the names on the panel, would there not?
If there was some restriction put on the sheriff that he should not allow the panel to be known until the morning of the sessions, or the morning of the assizes, I think in that way the difficulty might be obviated.

3631. But if you give a right of challenge to the accused person, how will he know in what manner that right of challenge should be exercised if he has not an opportunity of making himself aware beforehand what persons are likely to be on the jury?
He cannot do that, of course.

3632. Has a large proportion of the crime with which you have had to deal, been crime more or less agrarian in its character?
Since last November what I have had to deal with has been mostly agrarian crime. In fact, I may say, there is a very marked diminution in the ordinary class of cases, such as sheep stealing, cattle stealing, and simple larceny, matters like those; there is not so much housebreaking even as there used to be.

3633. Have you reason to believe that in the neighbourhood of Limerick there is anything like an extensive Land League organisation?
There is a most extensive Land League organisation even in my own town.

3634. Have you any means of knowing who is, and who is not connected with the Land League?
I know a great many that are connected with it. There are a good many, as I believe, connected with it through terror and through fear.

3635. Would it be highly probable that in a jury composed largely of the members of the farming class there would be some individuals connected with that organization?
I should say almost every man on every jury in our county is connected with the organisation, and I always make it a point in those agrarian cases to get the constable in the immediate neighbourhood of any juror that may be summoned to give me any assistance as to what part each man plays, if any, in any Land League meeting in his neighbourhood, and I find the constable is always most active

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active in that respect; but I am almost satisfied I could not get a jury in Limerick now without, at all events, half or more of them being connected with the Land League.

3636. Even if you exercised the right of ordering jurors to stand by, you think that would be so?
Yes, even by exercising the most diligent care.

3637. Therefore, does it not come to this, that there is a great preponderance of agrarian crime, that the jurors are, as a rule, members of the farming class, and that a large number of the members of that class are connected, more or less closely, with the Land League organisation?
Most certainly.

3638. And I gather that under these circumstances you would not have much confidence, even if evidence were forthcoming, that the jury would be very likely, in cases of that particular sort, to return a proper verdict?
Certainly; even if the strongest possible evidence were brought home, there would, to my mind, scarcely be a satisfactory verdict.

3639. And you say this state of things has manifested itself more especially since the recent agitation assumed its present proportions?
Yes.

3640. *Lord President.*] Do you consider the juries in Limerick are sufficiently intelligent to do their duty?
I think there are a great many of them intelligent enough, and I think those intelligent men, perhaps, would be able to lead all the other men if they were not to a certain extent intimidated by the fear of what would happen if they gave a verdict hostile to the criminal in the docks.

3641. Then it is entirely from sympathy or fear that they fail to perform their duty now?
I would be rather inclined to say so.

3642. As regards the jurors on one of the juries, you mentioned the qualification was high?
Very high.

3643. So that you would not gain anything by increasing the qualification?
I do not think so; I think you would get just as good a jury now, and just as good a verdict under a 40 *l.* qualification as you will under a 100 *l.* qualification. I think that terror is put into their hearts more or less by this conspiracy and league outside.

3644. You said in one of these cases you took care to get the jury chosen from different parts of the country; you can do that under the Act, can you?
Yes. I got those particular men taken from as far away from the immediate locality where the crime occurred as was possible, so that, if possible, none of the jurors should happen to know or be connected with any of the prisoners.

3645. *Lord Privy Seal.*] That you did simply by setting aside others?
Exactly; there were a great many called who I knew, of my own personal knowledge, to be from the neighbourhood where the outrage was made, and who were, perhaps, more or less connected with the man in the dock. I got those men put aside, and I got men from as far away as possible, men entirely disconnected with the locality to serve, and who were men that I thought, from my own previous knowledge of them, would listen to the evidence, and give a verdict, after paying the best attention they possibly could to the case.

3646. *Lord President.*] Has there always been a difficulty in Limerick, in party cases and faction fights, in getting verdicts from juries?
Not so much at all times; faction fighting was a great deal more prevalent about seven or eight years ago, when my father was the sessional Crown solicitor for Limerick; I used to go about with him from time to time, and there was a

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difficulty, but not to the same extent as there is now, in getting fair verdict, according to the evidence.

3647. Lord *Penzance.*] In the district you speak of, the Land League organization, I suppose, is tolerably prevalent?

Very much so; all over the whole county indeed, I might say.

3648. Lord *Emly.*] Did the prisoners in the Abbeyleale case use their right of challenge?

They did not challenge a single man; of all the men that were called not a single man was challenged. Perhaps there is one thing I may tell you about those prisoners that I omitted; I was directed by the Government to oppose any application as to trial in the first instance, and I did so. However, the magistrates that officiated in the case, in the exercise of their discretion, did admit the prisoners to bail, and on the evening of their return from custody and going out, pending their case coming on at the assizes, the whole country, I may say, was in a blaze with bonfires, illuminations, and every thing of that kind, for them, not only in their particular locality, but perhaps for 15 miles all round; and the same thing occurred the other day, when the jury disagreed. The whole country for miles around was in a blaze with bonfires and illuminations immediately on their return, and I know myself those men are quite satisfied that they will never be convicted.

3649 I think to protect the magistrates in holding the preliminary investigation at Abbeyfeale, a large force of military was brought out?

We had a very large force; I attended with Lord Guillamore, Mr. Quinn, and Mr. Collette; we had a hundred soldiers nearly every day, cavalry, police, and infantry, and there were stones thrown at us on more than one occasion, and I may tell you that my own windows were broken through the action I have been obliged to take for the last few months; five of my own windows were broken, and stones were thrown into my very bedroom, where I was going to rest, a week ago this very night.

The Witness is directed to withdraw.

MR. WILLIAM O'CONNOR MORRIS, is called in; and Examined, as follows:

3650. *Chairman.*] I BELIEVE you are Chairman of Quarter Sessions and County Court Judge of Kerry?

I am.

3651. How long have you held that office?

Four years in Kerry, and nearly six years in the county of Louth before that.

3652. Will you state generally to the Committee how far you are disposed to think that the general principles upon which the legislation of 1871 proceeded were sound, and such as commend themselves to your judgment?

If the matter were *res integra*, it would be, I think, a serious question whether the legislation of 1871 should ever have been adopted, but I apprehend now that it is impossible to recede from that state of the law. I am bound also to say that the old legislation which was founded on the Act of 1833, had practically become obsolete. There were several reasons for this. The old legislation of 1833, and the antecedent legislation, was founded upon the principle of giving jurors a qualification by tenure. That qualification, owing to a great variety of circumstances, with which everyone acquainted with Ireland must be more or less familiar, had practically become nearly worn out; and in addition there was the great and paramount objection against the old state of things, namely, that the sheriff had a power of selection. We all know what happened in O'Connell's case; that case threw discredit, in my opinion, upon the jury system of Ireland as it was

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was then constituted. Of course I speak ignorantly, because that case was long before my time at the bar; but as far as I know, the sheriffs did not exercise the power of selection in a reprehensible way; but at the same time there was a suspicion that they did, and altogether the old state of things was no longer to be borne; but that is a different thing from the proposition whether the legislation of 1871 was founded on a sound principle. On that I do not like to give an opinion, because I apprehend, as a practical question, it is impossible to go back from it now, absolutely impossible, as impossible as it would be to go back to the old Parliamentary system before the Reform Act of 1832. The one is as impossible as the other.

3653. With regard to juries formed under the new system, would you state to the Committee your opinion as to the way in which they have discharged their duties?

I am only chairman of quarter sessions, and that is an inferior court, as your Lordships know; and, very properly, the great majority of agrarian cases go, not to the quarter sessions, but to the assizes, and that for two reasons; the jurors are selected from the body of the county for the assizes, but they are only selected from the district for the quarter sessions; magistrates cannot serve at the quarter sessions; but they can at the assizes, and therefore there is rather a better chance of getting a conviction in agrarian cases at the assizes than at the quarter sessions. However, I have tried a few agrarian cases at quarter sessions, and I may say that, in almost all, there has been a miscarriage of justice. Your Lordship has seen what Judge Lawson said the other day upon this subject; I have simply to say the same: I tried, about 10 days ago, a case of this kind, it was not a very bad assault, but still it was rather an aggravated assault upon a process server; the case was brought home to the prisoner as clearly in the mind of any unprejudiced and impartial person as could well be conceived; the defence was futile and ridiculous; but the jurors, though I reminded them of the sanctity of an oath, and also reminded them emphatically that trial by jury was on its trial, went against the evidence, after my keeping them in a long time

3654. Lord *Penzance.*] Was it a verdict of acquittal?

I am not quite certain, but will refer to my notes. [On referring to my note-book I find it was a verdict of acquittal.]

3655. At any rate there was no verdict of conviction?

There was not. I am sorry to say these things are notorious. That case was one of the worst I have tried. The agrarian cases I have tried have been very few, but in almost all the result has been either disagreement or acquittal.

3656. *Chairman.*] In cases which are not agrarian but political, should you have the same doubt as to the conduct of jurors?

Upon that point I have looked over my books with some care, anticipating that question. In two classes of cases, assaults on officers of justice in the discharge of their duty, ever since I have been in Kerry, there has been a complete denial of justice, at least in nine cases out of ten; in the other class of cases, namely, faction fights, of which there are a great number in Kerry, as there are, as Lord Emly knows, in Limerick, there has also been a denial of justice, but I do not so very much complain of that. There is a kind of rude justice in the view they take of faction fights; at least that is my impression. They say it serves both sides right; that is what runs in their minds. In the first class of cases it is natural to a certain extent; the jurors are people from the farming class, and during the last three or four years there have been a great number of executions against them, and very naturally their sympathies are against the officers of justice in the administration of the law. In these two classes of cases I have remarked that verdicts cannot be obtained. In the ordinary, and what you may call social, cases, the verdicts are on the whole reasonable. There is not the slightest want of intelligence in the people. In fact, the jury system of Kerry, as is the case with the jury system, I apprehend,

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of the rest of Ireland, represents and reflects the opinion of the country. That is what you have to deal with, and you might just as well expect a jury of Saxons 700 years ago to convict a fellow Saxon for murdering a Norman noble, as you would expect a Kerry jury to convict in agrarian cases any one accused of injuring a landlord or agent. The thing has struck me as really a true analogy.

3657. The cases which you are speaking of have an agrarian complexion, and the jurors who try them are members, as a rule, of the agricultural class?

Your Lordship knows, of course, that Kerry is, a purely agricultural county. The qualification in Kerry for common jurors is 40 *l.*, under the Act of 1876; in town and house holdings there is a qualification of 10 *l.* The qualification for special jurors is 70 *l.* in the county, and 50 *l.* in towns. That is the qualification in Kerry. Then there are what you may call fancy qualifications in the Act of 1876, which were, no doubt, intended to leaven the mass, but they are futile; they are mere drops in the ocean. There was a tenure qualification of 10 *l.* freehold, and 21 *l.* leasehold under the Act of 1876; that was introduced, but I apprehend it makes no difference; you cannot leaven the mass by a little addition of that kind.

3658. Should you be inclined to think that by raising the qualification you would get a better class of juror into the box?

That is a question as to which I have not sufficient local knowledge of the county. I sit there only as a judge, and I am not sufficiently acquainted with what you may call the social strata of the county to be certain upon that point; but the impression upon my mind is that the raising of the qualification would make but little difference. It might make some difference, but I do not think it would make much difference; I think possibly adding what I may call a few fancy qualifications might be of use; but in a large county like Kerry where the overwhelming preponderance in numbers is on the side of the purely agricultural class, I think the addition of those fancy qualifications would not make much difference. I mean by fancy qualifications, such as sons of magistrates, sons of Peers, sons of clergymen, sons of attorneys, and that class of men, and perhaps certain kinds of traders. That would no doubt leaven the mass. And there is this to be said: the Irish are greatly led by men of superior intelligence and character; but in the present state of the county, in agrarian cases, I do not think it would have much effect if the addition were made.

3659. If we contemplate a state of things more happy than that through which the country is now passing, you think it would be desirable to ensure as far as possible the presence in the jury box of what you have described as a leaven of superior intelligence?

I think that would be very desirable; I think it is an experiment that should be certainly tried if possible; I guard myself from saying that I think it would have a decided effect.

3660. We have had a great deal of evidence to show that the few persons of superior education and intelligence who are now to be found in the jury list are kept from serving on the common juries by a variety of circumstances, is that your impression?

Yes, that is my impression, certainly.

3661. I will just enumerate the causes alleged; and you will, perhaps, tell me simply whether you agree with them?

We have been told they are excluded because some of them are required for service of the grand jury; because others are required for service on the special juries; because many persons of that class are averse to finding themselves immured in the jury box with colleagues of a station humbler than their own; also it has been stated that the duty of trying these cases is often an odious, if not a dangerous duty; and, finally, it has been represented to us that the manner

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manner in which the prisoner is able to exercise the right of challenge tends to exclude from the jury persons of the superior position who might be expected to take a more independent view of the case?

You may assume in Kerry that the prisoner will challenge, to the extent of his power, every respectable man he can find. Your Lordship is aware that by modern legislation in misdemeanour there is a challenge of six given. The distinction between felony and misdemeanour has been so broken down now that that is not unreasonable.

3662. Have you had any personal knowledge of cases in which jurors have been made the subjects of pressure or of intimidation?

Personally I have not; that would not come in my way.

3663. Have you considered the expediency of resorting to a change of venue in all cases where the locality in which the crime occurred, and in which it naturally would be tried, is excited or disturbed?

I have considered that, and I am inclined to think (but with a great deal of doubt) that it might be advisable to try this experiment. The Attorney General, as your Lordships know, is the minister of justice in Ireland, and all prosecutions go to him; he reads all the informations over in the first instance, and writes on the back of them "prosecute" or "not prosecute." I am inclined to think that he should have an option given him by Act of Parliament by his mere *fiat* to send agrarian cases, if he thought it desirable, to Dublin, and perhaps to Belfast. I could not recommend Cork; I thought of Cork, but cannot recommend it.

3664. Would not the removal of a case around which a good deal of popular excitement gathered, from the south of Ireland to Belfast, create a great amount of suspicion and dissatisfaction?

It would create a great amount of dissatisfaction.

3665. Almost as much as suspending trial by jury, would it not?

I do not think it would as much. Of course, in common with every one that is concerned in the administration of justice, I am anxious to retain the institution of trial by jury if it possibly can be retained; but I think that where you have the sympathies and the opinions of the whole population of a county engaged in resisting justice and the administration of the law, you must make a choice of evils. You must either change the venue, so as to try and get justice, or you must suspend trial by jury for perhaps a certain number of years. It must be either one or the other; I see no alternative. I should add that in a large class of cases I think the magistrates should have extended summary jurisdiction.

3666. I should like to come to that in a moment. With regard to the second alternative which I understood you to contemplate, namely, removing the venue to Dublin, supposing the prevalence of crime of this description to be considerable, would you not, by changing the venue whenever such crime came for trial, throw upon the Dublin jurors an amount of work which they would be scarcely able to cope with.

You would throw a considerable amount of work upon the Dublin juries, and it would have to be considered how that was to be arranged; but, at the same time, you will bear in mind that the Attorney General would probably only direct that course to be taken in a few notorious cases. I have been rather watching, as I suppose many of your Lordships have, the action of Dublin juries in the civil land cases, of which there have been a considerable number in Dublin, and on the whole the Dublin verdicts have, I think, been tolerably just. There have been a number of actions for rent and ejectment brought in the Dublin courts before Dublin juries in which verdicts would have been impossible, and could not have been got in Kerry. The Dublin juries, I think, have given very fair verdicts, as far as I can judge. Therefore, judging by the analogy of civil cases, I think possibly the extension of criminal cases to Dublin juries might be expedient. As your Lordships know, in not a single case have any of the judges of the superior courts complained of Dublin juries.

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We know very well what they have done as regards other juries. Of course, the proposal is a *pis aller*; it is a painful alternative.

3667. You would be glad to see recourse had to the change of the venue, so long as such change of the venue could be resorted to without overwhelming the Dublin juries or the Belfast juries with work?

Certainly; and I would give the duty to the Attorney General, as the minister of justice.

3668. I interrupted you just now, when you were going to make an observation with regard to the jurisdiction of the local magistrates; may I ask you to continue what you were going to say?

As your Lordship knows, the jurisdiction of the local magistrates is very limited. It extends to only a small class of cases, such as petty assaults, and cases of that kind. I think the local magistrates should have a large extension of jurisdiction. It would be necessary to increase the number of resident magistrates in that case; and I further think they should have a considerable increase of jurisdiction in such matters as riots and affrays, and all that class of cases, and cases of forcible possession. Why should not magistrates try those? Take the common case, of which we have had many in Ireland within the last year, of a tenant ejected or evicted; he is turned out, and audaciously goes back and squats on the land, to use a vulgar expression. That is as simple an issue to try as any that a sensible man can try. Surely there is no objection to letting magistrates adjudicate upon that kind of case.

3669. Are not the magistrates able to deal with cases of forcible entry?

No.

3670. You would, on the one hand, increase their jurisdiction; would you, on the other hand, ask them to deal with cases which they now send on for trial?

Yes, a certain class of cases. The magistrates now have only a limited jurisdiction, such as in common assaults. They can bind people over to keep the peace; that is their common law jurisdiction; but it is not of the slightest use binding people over to keep the peace.

3671. Would there not be a feeling that the local magistrates, being mostly gentlemen more or less connected with the landed interests, are not a fit tribunal to try cases arising out of those agrarian disputes?

There would be that feeling, to a certain extent, no doubt; that is part and parcel of the unfortunate antipathy which appears to exist against the whole of the upper classes in Ireland. I think the Executive Government should be strengthened by the addition of a considerable number of resident magistrates.

3672. You think, I suppose, that the presence of the resident magistrates on the bench increases the public confidence felt in the decision of the court?

I rather think so. I have not had many opportunities of judging, because it is many years since I sat as a magistrate myself. I only sit as chairman of the quarter sessions. Though I am a magistrate in my own county, I do not sit at petty sessions now, because I do not think it is becoming to do so; but sitting at quarter sessions, I am inclined to think the people prefer the resident magistrates, though I cannot express a strong opinion upon the subject.

3673. It has been stated to us that there have been cases in which local magistrates themselves have been induced (I think the expression used was "coerced") either to attend for a particular purpose, or to absent themselves from the hearing of the case?

I have certainly seen nothing from which I could suspect that; indeed, the Kerry magistrates are very fearless in the discharge of their duty as far as I know, and some of them are extremely intelligent.

3674. You have suggested several steps which might be described as palliatives;

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tives; do you think that if the present condition of the country continues, the adoption of any palliatives will suffice to prevent the kind of miscarriage of justice of which you and others have complained?

I can only conjecture. I am bound to say I take a rather gloomy view of the future of Ireland; perhaps that arises from my being connected with one of the worst counties in Ireland, for Kerry now is a scene of anarchy, of disorder, and of contempt of authority. I do not know if it is right to mention something which came under my notice as regards contempt of authority; it is almost an anecdote, but perhaps I may mention it. I do not know whether your Lordships saw it in the public papers, but it struck me as a scene that would not occur in any part of civilised Europe except in the south of Ireland. I had occasion to dismiss a process-server of my court for refusing to serve processes. It was sworn by what I may call the prosecution, that a certain priest had put him up and paid him not to serve those writs. I dismissed the process-server, and as a Christian clergyman was implicated, I said openly in court, that though I had no jurisdiction over this gentleman, I would give him an opportunity of coming forward and explaining. He did come forward and explain. I told him the charge; I told him that I thought it was a serious thing, that a clergyman of a Christian Church should interfere with the administration of justice; and he denied the charge. I said, "I am extremely glad to get your disclaimer; but I am sure that as we are both Christians you will recollect the precept, 'Render unto Cæsar the things that are Cæsars.'" He said, in the most outspoken manner, "We will put down Cæsar." Then I said, "Well, that is rather a hard saying, but you will remember there is another text, 'Let every soul be subject to the higher powers;'" and he said, "We will put down the higher powers"; and he said that openly in a court of justice. That which I heard last April is an instance, and I think a striking instance of the wide-spread demoralisation which exists in the county.

3675. In a country district so demoralised as that which you have described, with jurors drawn, as I presume they must always be, largely from the farming class, you would have no sanguine anticipation that however strong the evidence was, a verdict in accordance with that evidence would be returned?

No, not in agrarian cases. I think in agrarian cases in Kerry it is almost hopeless to expect a verdict; and that is the opinion not only of myself, but I believe of every judge who has gone the last three assizes. I think since the summer of 1880 there has been a suspension of justice in agrarian cases.

3676. *Lord Privy Seal*] Do I understand that you draw a very decided distinction between the present state of things and the ordinary state of things that prevailed until a year ago?

I think there is a decided distinction; but since I have been in Kerry there has been a disinclination on the part of juries (and I have told them so over and over again) to render justice in two classes of cases, assaults on process-servers and ministers of justice, and faction fights. Of agrarian cases, as I said before, I have had very few. Long before the land agitation began, certainly so far back as 1878, I repeatedly told quarter session juries that if this state of thing went on, society for its protection would vindicate itself and find some other mode of trial.

3677. Do you think there was much agrarian crime in Kerry until the present agitation sprung up?

No there was not; and in Kerry there has been no actual murder. There is not the class of agrarian crime that there is in Tipperary and other counties. Agrarian crime in Kerry consists principally of burning houses and sending threatening letters, and that class of cases; and there have been several most savage and brutal assaults. There was an unfortunate process-server nearly killed the other day; his arm had to be amputated, and he is still in danger; but I do not think there has been a murder.

3678. Was not Kerry until the present agitation a very peaceable and orderly county?

Certainly, so far as crime is concerned.

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3679. There was not much Ribbonism, was there?
I should say not. I left Louth only in 1878, so I did not see Kerry until it was on the verge of the present agitation. As your Lordships know, 1878 was a bad year, and the seeds of the agitation were being laid then. The American element acts very strongly in Kerry indeed.

3680. You have found traces of that influence?
Yes.

3681. And of what may be called Fenianism?
I have not had traces of Fenianism in a court of justice, I think; but it is quite notorious that it exists in Kerry. Kerry has a very considerable number, and I apprehend Cork too, of returned American emigrants, who are the most undesirable of people you can conceive.

3682. They are opposed to all authority, I suppose you mean.
Yes; they inherit the traditions of hatred that began in 1847, and they detest British institutions.

3683. Speaking of the ordinary state of things, and what could be done to improve the working of juries in ordinary times, you said that you desired to find some means of infusing a larger leaven of some more independent and enlightened jurors; have you ever considered the possibility of introducing a certain proportion of jurors from the special list into the common jury list?
That has occurred to me; and it has also occurred to me as possibly worth trying, that the Attorney General should have the power of directing a prosecution in agrarian cases exclusively from the special jury panel. That has occurred to me, but I own, in the present state of Kerry, I do not think that that would have anything like a decisive effect. The common jury panel, I think, consists of over 1,100 names; the special jury panel consists of 250 names, I think, or something about that; and it might be worth trying whether the Attorney General should not have the power to direct the prosecution to be tried before a special jury; but I am not sure that it would have an important effect upon the administration of justice.

3684. As things are now, you mean?
As things are now.

3685. I ask my question on the supposition that the present crisis may not last for ever?
The present crisis of course will not last for ever; but the results of the present crisis will, I think, last for our time. Confidence is broken down, the administration of justice has become detested, authority is despised, and there is painful social disorder.

3686. You are now speaking of the county of Kerry, I suppose?
Yes; but long before this agitation began one of the very worst cases I ever tried was in Louth; it was an attack by four returned American emigrants on three soldiers of the 5th Dragoon Guards, I think. They leaped out from a ditch, and they deliberately stabbed to death a valuable horse belonging to the troop serjeant major. The evidence was as clear as daylight, and I was angry with the jury; they differed; the case was tried three times, and they differed every time.

3687. How long ago is that?
That was about the year 1876.

3688. Was the case tried at Dundalk?
At Dundalk; it was as plain a case as could be. These fellows were Fenians. The only defence that was suggested was that the soldiers were drunk; that was no defence at all to begin with; but in the next place, I do not think they were drunk; and I have very little doubt it was antipathy to Her Majesty's troops. As you know, Dundalk is a very bad place indeed.

3689. Still, upon the whole, I suppose you would say the administration of justice in the county of Louth is tolerably successful?

Yes;

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Yes; as long as I was in Louth from 1872 to 1878 I cannot say I had any reason to complain except in one or two cases; Louth is, as it were, a different world from Kerry.

3690. Do you suppose that the number of special jurors, in Kerry I will say, would admit of a rule which would require the presence of a certain proportion from that list upon every petty jury?
In Kerry it would, certainly.

3691. Supposing a third were required to be taken from the special jury list, do you think that would be possible?
I think it would. The right of challenge of the prisoner is not very large. The right of ordering to stand by of the Crown is practically not very large; they have an unlimited right theoretically, but they do not exercise it very largely, at least not in my experience.

3692. Do you not consider the prisoner's right of peremptory challenge in cases of felony to be a large one?
I think it is 20 in the case of felony, and six in the case of misdemeanour. I have never seen the whole of the 20 challenges, I think, exercised; in fact, I may say I am sure I have not.

3693. Do you think it necessary to make so great a difference in the right of challenge between misdemeanour and felony?
The right of challenge in misdemeanour is quite a modern one; it is a thing of yesterday; but I think it is quite right in principle, because the old common law distinction between misdemeanour and felony is almost broken down by Act of Parliament, and if you have a right to challenge in one case you ought to have it in the other. The Act of 1876 was only tentative; it limited it to six. For instance, perjury is a misdemeanour, and that is a greater crime than stealing a coat; at least, I think perjury is a misdemeanour.

3694. Do you mean that you would be inclined to retain the number of 20 challenges in cases of felony?
It is well worth considering. It is a proposition that I should not like to sanction myself, but it is worth considering, I think, whether the right of challenge on the part of the prisoner should not be taken away in all cases except upon cause shown; that is to say, that the prisoner should be bound to show some reasonable cause why a juror should be excluded; but then the great difficulty of legislation of that kind is that it seems to me impossible if you restrict the right of the prisoner in that way, not to restrict the right of the Crown to orders jurors to stand by; you cannot, I think, have a one-sided scheme of that kind.

3695. Do you think it would be possible to authorise the judge to decide off-hand as to the causes alleged for challenge instead of resorting to the present cumbrous process?
Yes, certainly. If the right of challenge were restricted to challenge for cause shown, undoubtedly the presiding judge should be the judge of the cause; the system of triers would otherwise be a farce. Every thoughtful man knows perfectly well that trial by jury presupposes a law-abiding and a law-loving community, which in Kerry you have not got.

3696. *Lord President.*] I understand you consider that no palliative now would restore the administration of justice to a proper footing; but still if the present agitation passes away we may carry out satisfactorily again the jury system?
I hope so.

3697. In considering that position of affairs, have you ever thought of the suggestion made to us once or twice of dispensing with grand juries at sessions in order to get a better class of jurors upon the other juries?
I have not considered that; you would get a slight improvement by dispensing with grand juries?

3698. You would get a considerable number, I suppose?
Yes,

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Yes, you certainly would; but that, of course, is a very considerable innovation on the old common law system.

3699. It was put to us, I think, on the ground that first of all the magistrates sifted the case, then the Attorney General dealt with them; and that, as the Attorney General had to look through all those cases, it differed in that way from the administration of the law in England?
Yes; and there is a strong body of opinion, modern opinion at least, that the institution of a grand jury is now practically an anachronism; but if you were to break it down in the case of quarter sessions it would be a great innovation.

3700. And if you do it in one case that would be a reason for doing it at the assizes too?
It would; and, in my opinion, it would be almost impossible not to extend it to England as well. There is nothing at all like a grand jury in Scotland, I think.

3701 Can you state the number of cases where you have known where grand juries have ignored a bill?
They have been very few indeed.

3702. Can you give us any figures as to the proportion?
No, I cannot; but I can answer for it that they have been very few.

3703. They have been very rare, you think?
They have been very rare.

3704. Another suggestion was made in the same direction, that the court of quarter sessions should be enabled to try a certain number of cases as contempt of court, with regard to process-servers and some other acts against the orders of the court; have you considered that?
No, that is a suggestion that I have not heard before. That would be a very wide and a very invidious jurisdiction, I think. The power of courts to commit for contempt is a power which I think should be very rarely exercised. As your Lordship knows, and as we all know, even in the case of the great Court of Queen's Bench in this country, there was a very strong popular feeling against committals for contempt, no longer than three or four years ago. I have the power of committing for contempt, and perhaps ought to have exercised it more than I have, for I have had very great contempts of court committed in my own court; but at the same time I think it is a power that should be extremely sparingly used by a judge, because it brings the judge directly and personally in conflict with the party, and that is the objection to it. The theory of contempt of court is that it is contempt of the court; but it very often becomes, or might become, contempt of the person of the judge.

3705. Lord *Penzance.*] Are you not speaking of contempts committed in open court now?
Yes, but still the popular opinion and sympathy would confuse it, and it would make the judge very unpopular no doubt.

3706. *Lord President.*] These cases referred to, such as attacks on process servers, would, I suppose, come under some other category of crime?
They come under the common law jurisdiction, rescue and assault.

3707. You have given your opinion as to palliatives in the present state of the case; what would you recommend under the circumstances?
I mentioned, in reply to the Chairman, that as a palliative, I think it might be very advisable to try, whether the Attorney General, as Minister of Justice, should in agrarian cases direct the prosecutions to go to Dublin and Belfast.

3708. That is only a palliative?
That is all.

3709. *Lord Privy Seal.*] Why would you limit his discretion to those two places?
Because I greatly fear that in the present state of Ireland you would have the same

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same antipathy to the law in agrarian cases almost everywhere; perhaps not in Ulster.

3710. Why should you not leave the Attorney General to judge of that?
Of course you might leave him to judge of it.

3711. *Lord President.*] You said you thought the Dublin juries in civil cases had done their duty exceptionally well?
I think so as far as I can judge.

3712. Can you give an opinion as to how they have done their duty in criminal cases?
No. I think almost the only agrarian case tried in Dublin was the Phelans' case; Mr. Boyd's case. In that case the jury acquitted the prisoners. I did not study the evidence very carefully, but my impression is that that verdict was correct.

3713. From your past experience, would you trust a Dublin jury, when there is excitement in the country, with a political or agrarian case?
I should be much more disposed to trust a Dublin jury in a Kerry agrarian case than a jury from Kerry.

3714. But still I understand this recommendation of yours is only in the way of a palliative?
Certainly, only a palliative. I am a little afraid, perhaps it is from being alarmed at the state of Kerry, that the social state of Ireland, as regards juries, is entirely out of order.

3715. What would you recommend to restore order and the administration of justice?
As an ultimate resort first of all, I would largely increase the summary jurisdiction of the magistrates; in the next place, if all palliatives failed, I am clearly of opinion that you must have special commissions of the judges of the superior courts in the disturbed districts trying agrarian cases. I certainly would not go so far as was done in 1833, and I would limit the jurisdiction to judges of the superior court. I think both the Crown and the prisoner are entitled, if a jury is dispensed with, to have the highest legal talent brought to bear upon the case. But if all palliatives fail, I am distinctly of opinion that you must have special commissions of judges of the superior courts to try agrarian cases.

3716. Without juries?
Yes.

3717. You would employ the same judges, who at other times might be employed with juries?
I think so. It was before my time, and before the time of anyone present, I believe; but I understand that in Lord Grey's time, special commissions were sent down to try a certain class of cases.

3718. Not judges?
No, not judges, certainly not; I think that was so in 1832.

3719. Another question is with regard to the evidence; when there is excitement in the country can you always get sufficient evidence upon which to try a case properly?
I think that, on the whole, there has been more failure of justice from the disinclination of the juries to find verdicts than from want of evidence.

3720. You think there is generally sufficient evidence?
There have been cases in which there has been insufficient evidence, but on the whole, I think there is usually sufficient evidence; I do not think the fault lies so much there.

3721. Have you any experience of the change of venue brought about by the winter assize system?
No, I have not; that has not fallen within my notice in the slightest degree.

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3722. Lord *Inchiquin.*] I understand you to be rather in favour of what was suggested by one of the witnesses here, namely, that the Attorney General should have, in fact, three alternatives for these agrarian cases; either by special jury, or by change of venue, or by a trial before judges?
Certainly.

3723. Would you say three judges?
Three judges as an ultimate resort; if trial by jury breaks down, I think you will have to come to that.

3724. You would leave that to the Attorney General to decide?
It could only be done by Act of Parliament. The Attorney General has no such power now, and, of course, the suspension or abolition of trial by jury would be a very difficult thing to pass, I think.

3725. With regard to the magistrates' increased jurisdiction, in what direction would you increase it. Would you increase it by giving them more power to give greater punishments?
In aggravated assaults, riots, forcible possession, and that class of cases.

3726. Would you leave it to the local magistrates, or would you in that case have resident magistrates?
I would increase the number of resident magistrates throughout Ireland, but would certainly draw no invidious distinction between local and resident magistrates. I think that is objectionable. I think it tends to sow jealousy and dissatisfaction between the bench.

3727. Lord *Penzance.*] Do you think there is any real practical objection to reducing the number of the prisoners' challenges; would there be any chance of justice being fairly done to the prisoner if, we will say, three-fourths out of the 20 peremptory challenges were taken away?
I do not think it would practically make any difference in the present social state of the country.

3728. I am speaking now in reference to the interest of the prisoner?
Of course; I do not remember a case in which a prisoner exhausted his whole challenges.

3729. Although he did not exhaust his challenges, he may have removed from the jury all the people he thought inimical to himself?
Certainly.

3730. The question I want to direct your mind to is this, whether you think there is any practical difficulty in the prisoner's interest being secured, supposing he had no peremptory challenge at all?
That is a question I should feel great difficulty in answering. I am inclined to think I should be in favour of doing away with the prisoner's power of challenge altogether, except for cause shown, but for this difficulty, that then you must somehow restrict the right of the Crown to make jurors stand by.

3731. Supposing they were both done away with, would justice be secured for the prisoner?
Certainly justice would be secured.

3732. From what you said about a Saxon jury dealing with a Norman, I gather that your opinion is that the Irish jurymen carry with them into the jury box all their prejudices and affections, and disregard, or throw into the background the obligations of the oath and the importance of doing justice?
Unquestionably in Kerry they do, in the present state of things.

3733. So that, in whatever direction their prejudices or affections point, their verdict is likely to go with them?
Yes, in agrarian cases certainly.

3734. That may be predicted as a tolerably certain result, may it?
Almost certain, and I would call your Lordship's attention not only to my experience, which is limited in agrarian cases, but to the distinct expression of opinion of the judges of the superior courts.

3735. With

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3735. With reference to the removal of cases to Dublin or Belfast, I suppose you see no objection to leaving it to the Attorney General to remove cases to any place?
Certainly not.

3736. It is rather invidious to point to two places, as if in Ireland those were the only two that could be found, is it not?
It is.

3737. If that power was given to him, he would probably suggest one of those two?
I think so.

3738. It was suggested that it might cast undue pressure upon the Dublin juries, and I think your answer was that the Attorney General would only direct the trial of a few notorious cases to be removed to Dublin?
I think that would probably be the view that he would take.

3739. What would become of the rest of the agrarian cases if he only directed a few of such cases to be removed to Dublin?
If justice were done in a few notorious cases it would have a most deterrent effect over the whole of Ireland.

3740. Would it, in your opinion, reduce the number of agrarian cases?
I think it would very considerably.

3741. Still, according to your view, if the Attorney General did his duty he ought to send them all to be tried somewhere else than in Kerry?
Of course there is that objection; but if he took, we will say a dozen, and tried them between October and April, I think it would have a most deterrent effect for the rest at the present period.

3742. As to other suggestions made, first of all as to increasing the number of stipendiary magistrates, have you formed any idea as to how that should be done?
No, I have not.

3743. You are clear that there should be an extension of the principle?
I think so; I think the Executive Government is at present extremely weak in that particular.

3744. Over what district does the stipendiary magistrates' jurisdiction extend at present?
There is no practical limit. In Kerry, my county, there are only three.

3745. Is that something like what there is in other counties?
I do not know.

3746. You have said that magistrates might bind over to keep the peace, but that that was useless; would you explain why it is useless, and what happens?
Practically I find it almost useless. They are bound over; they run away; the recognizances are estreated, and generally the whole thing is turned into contempt.

3747. Is the money paid?
As far as my experience goes, it is very seldom indeed paid; they elude or evade it somehow.

3748. Perhaps that is because the persons who become bound are not capable of paying?
I do not find that it has a deterrent effect, in the slightest degree.

3749. In one way or another you think that the recognizance does not effect its purpose?
Scarcely; estreating the recognizances is a long and tedious process. You have to serve notice on the parties; then they are brought before the quarter sessions, that takes time, and the parties find one way or another to elude the payment.

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3750. At your quarter sessions, are recognizances often estreated?
Not often.

3751. Is that from want of activity on the part of the Executive Government?
I cannot answer that question.

3752. I want to ask a question with reference to trial by special jury, or a jury partly composed of special jurors. Take, first, the case of a full special jury; you said you thought that that would be no good?
I do not say that it would be no good; at least, I should qualify that. What I said was that I was afraid it would not have any striking effect.

3753. Would not a special jury be composed of a set of men inclined to do their duty?
The qualification of special jurors is not very much higher than the other; it is 70 *l.* as compared with 40 *l.*

3754. Then, it would bring in people of the same class?
Perhaps not people of the same class; but to a very considerable extent people subject to the same influence.

3755. Do you think they would be subject to the same influence?
I think so, to a very considerable extent. Of course there would be exceptions.

3756. Earl of *Derby.*] I take the general purport of your evidence to be this: that without a complete change in the feeling of the people as regards the law, no modification of the jury system would be of real use in dealing with agrarian cases, with assault cases, or cases where the police are concerned?
I am afraid so.

3757. *Chairman.*] When you suggested that if a change of the venue were resorted to, it should be preferentially to Dublin or Belfast, did you mean to convey to us that the demoralisation of the class from which the common jurors are usually drawn, is so extensive throughout the agricultural districts in Ireland, that in those districts there would be no prospect of getting a jury fit to try an agrarian case?
I should greatly fear it; but of course I speak not from my own experience but from what I see in the papers every day.

3758. Your own experience is limited chiefly to Kerry?
Yes.

3759. We all know that you have watched the progress of events in the county generally for many years past?
I have watched it like everybody else, and I have had my eyes open.

3760. It has been stated to us that names of persons, disqualified for service on the jury, and who may claim exemption, are sent in upon the list year after year, and that these persons are put to the trouble of attending at the sessions; can you say anything as to that?
I have had some instances of that kind.

3761. You think that the complaint is well founded?
To a certain extent, I suppose, it is. I have very little means indeed of knowing that. What I get is a book, and then the objections are marked on the book and I strike out the names objected to; but I have no personal means of knowing unless jurors themselves choose to attend, which they hardly ever do. I mean those men who are too old. Kerry, as your Lordship knows, is a large place, and of course if a man comes forward and says, "I am above 65, or have some permanent infirmity," or something of that kind, I strike him out; but in the great majority of cases they do not come forward to make the objection, and the revising barrister has no means of knowing unless they do; but in order to avoid the fine at the sessions they come forward very often and claim exemption.

3762. Is there anything to prevent the clerk of the union from sending forward, year after year, the names of persons whom the revising barrister has struck out before?
I believe there is not; I rather think not.

3763. *Lord*

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3763. *Lord President.*] Your evidence is principally given with regard to Kerry and Louth; do the same comments apply to the county where you reside?
That is King's County?

3764. Yes?
I have pointedly abstained from acting as a magistrate in the King's County.

3765. You must be aware how the administration of justice is conducted there?
I hear very bad things as to King's County; but your Lordship has had Mr. Neligan before you, and he knows much more about it than I possibly can; all about my part, the King's County, is quiet enough.

3766. *Lord Privy Seal.*] You do not apply to the county of Louth the gloomy statements that you have been compelled to make as to Kerry?
Decidedly not. Louth is a different world altogether.

3767. I want to ask you one question bearing on your suggestion as to the enlargement of the jurisdiction of magistrates; are you able to give us any opinion as to the advantages or otherwise of employing resident paid magistrates, or as to their efficiency; have you any experience that would enable you to give an opinion upon that point?
It is invidious mentioning names.

3768. I do not ask for names?
Certainly; in Kerry and in Louth, I think the resident magistrates are very efficient. It is quite right to mention Captain Keogh; he is a brother of the late judge, and he is a particularly able man; Captain Keogh is as able a man as I have met; he has a good deal of the ability of his brother.

3769. I suppose you would agree with me that a great deal depends upon the efficiency of the resident magistrates?
A great deal; it is an office of the very highest trust just now.

3770. Would you be glad to see the number of resident magistrates increased?
Certainly; I think that is a weak point of the Executive Government of Ireland.

3771. You think that a larger number of well-chosen and well-paid resident magistrates would be an important reform?
I do; giving at the same time to the whole bench increased summary jurisdiction; I lay a good deal of stress upon that.

3772. Would you require the presence of at least one resident magistrate?
I think so; I would require at least one resident magistrate; but I would not draw an invidious distinction between the local and resident magistrates; I think that is very objectionable.

3773. *Chairman.*] But if you draw no distinction between the two classes of magistrates, do you not expose the resident magistrate, whom we suppose to be better qualified than his colleagues, to being overruled by the chance presence of two or three local men?
Practically I have never found that. I have always found great unaminity and harmony between the resident magistrates and the local magistrates; I say that as a chairman for nearly 10 years, and that I can answer for most distinctly, both in Louth and Kerry.

3774. *Lord Privy Seal.*] Is not there a distinction already in jurisdiction of the two classes of magistrates?
Yes, under certain Act of Parliament the resident magistrate has special powers.

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3775. Then there would be nothing new in that so far?
No, I merely state that because I would not sow jealousy between the two. For instance, arms' licenses and things of that kind should be given to the resident magistrate. And the leading of the military or of an armed force would naturally belong to the resident magistrates and must do so. Then all such things as taking informations in serious crimes, such as agrarian cases, and cases of that kind, devolve upon the resident magistrate.

3776. Do you think it is always possible to trust to the independence and energy of the ordinary unpaid magistrates in troublous times?
It is, of course, very difficult. The position of the local magistrate in Ireland is not a pleasant one; he belongs to a class distrusted and disliked; he is unpaid, and he has no particular obligation to do his duty; but I am bound to say that, as far as I have seen both in Kerry and Louth, the resident magistrates do their duty remarkably well, considering all the circumstances.

3777. Lord *Inchiquin.*] You have not found that they shirk their duty at all, have you?
Certainly not.

3778. Lord *Penzance.*] Do you think that the resident magistrate ought to be a lawyer, or not?
That is an extremely difficult question. The impression upon my mind is this: that the resident magistrate should be taken from no particular class I do not know that lawyers would make the best class of resident magistrates.

3779. *Lord President.*] At present the pay that is given to the resident magistrates is hardly sufficient to attract the best kind of lawyers, is it?
It would not attract the best kind of lawyers.

The Witness is directed to withdraw.

Mr. FAVIERE ELRINGTON is called in; and Examined, as follows:

3780. *Chairman.*] I believe you are a Queen's Counsel, and Recorder of Londonderry?
Yes.

3781. Are you able to express any opinion to the Committee as to the general expediency of the changes in the law introduced by Lord O'Hagan's Act?
Perhaps, as regards the county of Londonderry, it works as well there as it is likely ever to do in any part of Ireland; and, I think, if we assume, as I believe we must, that we cannot have any system of selection, it appears to me that in theory, and where it is not disturbed by causes that are extraneous, it is a fair system.

3782. If you are to have trial by jury it must be based upon a system like the present, you think?
I cannot discover any better system, if you exclude all selection.

3783. But you would not yourself contemplate the possibility of returning to selection?
I certainly should very much prefer the system of selection myself to the present system; because I think that the rating is to the last degree a bad test of the qualification of a juror. In the county of Derry you might have men rated at 100 *l.* a year, whom you would not make jurors, nor ask to give their opinion about anything; whereas you might have a man rated at a very small amount, who is the very man you want. The rating is not in Derry, and I believe it is not anywhere a test of the qualifications of the juror.

3784. Would

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3784. Would you state to the Committee your impression of the manner in which the juries have discharged their duties in the district with which you are familiar?

I am fortunate enough to be able to say very shortly, that I think the juries in Derry exercise a very fairly wise discretion in the matters submitted to them, and I have no remarks to make to the Committee as regards the jurors. Sometimes you may, of course, find instances of stupidity, as you do everywhere; but as regards anything like improper influence or improper exercise of their functions, I do not think I have any reason to suppose that such a thing exists.

3785. From what class are the common jurors drawn?

In the county they are almost all farmers; of course in the city it is different.

3786. Has there been anything in the way of agrarian agitation in that part of the country?

Not the slightest.

3787. Therefore the jury system has not been subjected in your district to the amount of strain which it has undergone elsewhere?

Not at all. In truth I am able to give your Lordship very little information that is worth anything on this subject; for this reason, that my criminal experience in Derry is almost nothing. In the last sessions that have been just completed, about the first week in July, we had only, I think, in the county three cases altogether, and they were of the most trivial description.

3788. Are there frequently cases arising from party or political excitement?

They do not come before me; they are not numerous now. Derry was rather noted for such things, but it is not the case now, as I know by report. Cases of that description are not tried, though they are triable at quarter sessions. I may say perhaps (and it is quite right to say it), that in such cases as that, from what I have heard and know of that county, I believe there might be some difficulty as regards the jury system, where questions of party feeling arose in the case, as is very well understood in most of the northern counties in Ireland.

3789. But there has been nothing approaching to a general miscarriage of justice in your district, has there?

Nothing.

3790. Your complaint of jurors, if you have one to make, is rather that under the rating qualification, such as that now in force, you occasionally get into the jury box an unintelligent juror?

Yes; perhaps there is no one who has any experience of jurors who has not found that happen in the case of common juries. What is very objectionable, particularly in Derry, where there are always plenty of jurors in attendance, is that they are summoned at present when there is nothing for them to do. Under one of the Acts that at present constitute the code of jury laws in Ireland, the whole panel of common jurors is always summoned, and I frequently have to call them over on fines, and then announce to them that there is nothing to do. I need hardly say that this tends to make the attendance worse, because it is impossible to make a man suppose it is his duty to attend in order to hear that.

3791. But you would not get rid of fines altogether, I suppose?

I would not; but I think it would be very easy, as regards the criminal business for the sessions or the assizes, to determine what was the amount of it, in sufficient time to summon jurors for that particular quantity of business; and if there was no business, not to summon them at all. Nothing would be easier than that.

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3792. It has been suggested to us that the moment at which you ought to have recourse to fines is when the jurors are called up for actual service on the jury, and not when the whole panel is called over on the first day, at the opening of the sessions?

That is true, generally. In experience in other places I have found that true, but in Derry, again, my evidence is affected by this fact that it is scarcely ever the case that a common jury with me is more than a few hours in attendance; and I must say their attendance is very good, and they do not leave the court until the business is over. I take what pains I can to make their duties light, and they attend and are discharged almost always on the first day of the sitting

3793. In that part of the country with which you have to deal, the position of things seems to be so favourable that it is almost superfluous for me to ask you whether you have any suggestions to make for its improvement?

I do not think we want any improvement in the county which I have the honour to preside over at present in the capacity of chairman of quarter sessions. But I should like to mention to the Committee one change that I think would be one of the steps that might be reasonably taken, in the hope that the jury system might not break down altogether, and it is this: I do not know whether your Lordships have heard it before, but it is not so great a change as some that have been suggested, while I think it might work very well; I would give the power to the presiding judge in a criminal case, in fact I would make it his duty, to certify at the close of the case whether he thought the verdict was perverse; and I would make that certificate render the prisoner liable to be tried again before another jury.

3794. You would render the prisoner liable, under those circumstances, to be tried a second time?

Yes, whatever were the verdict, whether an acquittal or anything else.

3795. But if the condition of the locality in which the trial took place was such as described just now, for instance, by the last witness, a second trial would not be likely to lead to more favourable results than the first, would it?

Certainly. I did not mention it, but it would strike one at once, I should say, that the mode of carrying out my idea would be that there should be the simplest means of changing the venue in criminal cases. And the Attorney General could clearly see his way to changing the venue, where there has been a trial which has been certified as abortive by the judge. It strikes me that this would be a better course to adopt at first than to try to get rid of the jury system altogether, although it would certainly be an inroad upon it.

3796. Would you suggest that the judge should be able to give a similar certificate in cases where a jury disagreed?

Yes, certainly. I would render the certificate entirely independent of a verdict, or no verdict

3797. You would allow that to be done in any case?

In any case where the judge considered the conduct of the jury perverse in any form or way.

3798. But that would be virtually suspending trial by jury, would it not?

I think not; one must always look at the possibility of a change being carried. Your Lordships are, perhaps, aware that there have been two or three instances quite lately in the southern counties of Ireland where this remedy would probably have been applied. Some cases have been lately tried where, I have no doubt, if the judge had had that power, he would have given such a certificate as I have suggested; and then it would have been for the Attorney General to say (supposing my idea were carried out) where that trial was to take place again. The prisoner should be either kept in custody, if he was in custody before, or allowed out on bail, and then the trial might take place at any place that might be determined upon.

3799. Would

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3799. Would not that create an impression that the prisoner was to be tried over and over again until a conviction were obtained; and that, virtually, he had no security that he was to be tried by a jury at all?

I do not think it justly would do that, and I do not know that, even if it did produce some effect, it would be altogether to be deplored. One great effect of it (perhaps indirectly) would be that the jury that tries the prisoner first would be more careful, perhaps, than they are now.

3800. Have you given your attention to the manner in which the right of challenge allowed to the accused is exercised?

Yes. I have long been of opinion that the right of challenge without cause ought to be got rid of altogether, because I think the present jury system having got entirely clear of selection, and being supposed (as it really is in theory, at least) to be a perfectly fair system, it does not involve any of the reasons for challenge that the old system did, and I am strongly of opinion that there should be no challenge, except for cause shown, either on the part of the Crown or the prisoner.

3801. You think that, as long as the jury was selected by the sheriff, it was quite right to allow the prisoner a large right of challenge?

Certainly.

3802. But now that the jury is selected mechanically, you do not think it should be so?

I do not think it is right any longer.

3803. Earl of *Derby*.] If a prisoner were tried again by direction of the judge, after having once been acquitted, do you think that there would be any prospect of obtaining a conviction, or would not the proceeding be so unpopular as to make it almost certain that the jury would not convict?

That might happen if the prisoner were tried in the same place, or by jurors taken from the same panel as before; but I think it would be always proper in such cases that the place where the prisoner is to be tried the second time should be at a considerable distance from the place where he was abortively tried. I had some experience when I was at the bar at the winter assizes; I happened to be deputed as Crown prosecutor in some cases, and I noticed there was never any challenging; there was never any attempt to make anything of a question as to who was on the jury; and the trials proceeded, as far as I know, without any suggestion as to unfairness or impropriety in any way, although some cases certainly were tried within my knowledge at a distance from where the crime was committed, with, I may say, very different results from what would probably have taken place if the prisoner had been tried, as it were, at home.

3804. Then, what you mainly rely upon is, the removal of the prisoner from the local influence and local sympathies which he would find in his own neighbourhood?

Certainly; and I do not think, even if things remain as they are at present, that this proceeding would be very common; it would be a measure that would not have to be often adopted.

3805. You said you thought it would have a considerable effect upon the first jury, if they were liable to have their decision reversed?

I think so, as the prisoner would not necessarily get out of his trouble by their returning a perverse verdict.

3806. Lord *Penzance*.] I notice that in your suggestion you use the word "perverse verdict"?

I do.

3807. That is a term very well understood by lawyers; but would you limit it to that, because a verdict might be very much and very plainly against the evidence, and yet not be what a lawyer would call "perverse"?

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I think the verdict should be more than what a lawyer would call against the weight of evidence, in order to introduce the suggestion I have made.

3808. A perverse verdict implies that the judge considers that the jury have determinedly set their face against the evidence, does it not?
Precisely.

3809. And you would limit your proposal to a case of that kind?
I would.

3810. Speaking as a lawyer; are you, or are you not, of opinion that a second trial is rarely conducted so satisfactorily as the first; I am speaking now in reference to witnesses who have given their evidence once, and have to give it over again, with an interval between the two trials, and the possibility of the witnesses talking the matter over between themselves, and enlarging upon their evidence in consequence of those communications with each other, and so forth, when they come to give it again?
I have had a great deal of experience in second, and even third, trials in criminal cases in Ireland, and I do not think that the second trial is injured by the circumstance that it is a second trial; I do not think the effect of it can be said to be less than it was at the original hearing of the case. I have known one remarkable instance in which a prisoner was convicted upon a third trial. That was a trial, which lasted in each case several days.

3811. I was not speaking of the satisfactory nature of the trial depending upon whether the prisoner was convicted or not; what I was alluding to rather, was this; it sometimes happens, does it not, that in the case of a second trial, where the witnesses who have given evidence on the first trial are known, that either on the one hand pressure is put upon them to abate something of what they have said before, or that as they talk the matter over with one another, they are inclined to fill up little difficulties that occurred in their evidence, to make it plainer the second time than the first?
Your Lordship will understand speaking, as I am doing, from the Irish point of view, that you scarcely ever hear of a witness for the Crown making his evidence any better than it was on the former occasion; I do not think that that is the tendency of the Crown witnesses in general.

3812. Is it not rather the other way?
Rather the other way, perhaps; the influences brought to bear upon witnesses in Crown cases before the first trial in Ireland are as great as they are ever likely to be; and therefore, although it may be the case here, I do not think the second trial would present the same features in Ireland as it may do in England.

3813. Altogether, then, you would say that a second trial was likely to be as fair as the first?
I do think so.

3814. To both sides?
To both sides.

3815. Lord *Inchiquin.*] Then you would prefer this system to a trial before three judges, I gather?
Yes. A trial before three judges strikes me as being one in which the difficulties are very grave indeed. There are difficulties about the judges, and I think it must involve the question of examining the prisoner.

3816. *Lord Privy Seal.*] I suppose nothing but the direst necessity would ever bring your mind to the adoption of such a course as that?
I confess I should think it one which nothing but the direst necessity would suggest; it is one of those things that I can hardly fancy in existence. I never heard of its being suggested before, and I have no instance that is satisfactory to me of its ever being tried.

3817. *Chairman.*]

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3817. *Chairman.*] Have you ever had cause to complain that the better class of jurors abstain from taking their share of service?

Not in the county of Derry, but I have in former places where I have been, and the difficulty of inducing special jurors to sit out a trial with common jurors (what I may call the social difficulty) is greater, perhaps, than your Lordship could believe. There is scarcely any amount of fine that some of the special jurors in Ireland would not submit to rather than have to go through the ordeal which is suggested by that course.

3818. Are you inclined to say that it is very much to be deplored that men of that class do not take a share in the work?

I do not think a jury so constituted would come to a conclusion in a county such as Mr. Morris was describing. The portion of the jury not so composed would be just as strong for its own purpose as at present; and in the present state of feeling in Ireland a mixture of that kind would, if I may use the expression, set the jury by the ears. There is a great deal of class feeling in Ireland at present which has grown up during the last two years, and which we all very much deplore; but it is getting apparently stronger every day.

3819. Regarding the country as being now in an exceptional state, do you think that under normal circumstances it would not be desirable to have in the jury box a mixture of classes?

It certainly would be desirable.

3820. Are there any steps which you would propose in order to obtain such a mixture?

The rating in some of the counties might do it, and I think it would be the only way to do it at present. The position Derry is in may perhaps express the difficulty in some places as regards the carrying out of what your Lordship speaks of. In the barony of Loughinshollin there are only 15 special jurors on the panel, and the population is over 65,000; the rating qualification is 100 *l.*, and, excepting magistrates, there are only 15 special jurors; the consequence is that they appear before me at every quarter sessions, and they are not enough to constitute properly a grand jury.

3821. Do you think anything could be done in the direction of strengthening the jury list by placing upon it persons who might be well fitted to serve as jurors, and yet who do not possess the necessary legal qualification?

Certainly. There was an attempt to do that in one of the Acts; I think it is the last one that exists; and it was a comparative failure because of the wording of the Act; it was a mere mistake; but that sort of thing might be done, and it would improve the panel immensely.

3822. Could you enumerate any classes of persons who might be included?

Yes. I think persons who reside in the country, like the eldest sons of resident individuals, and members of corporations like banks, and so forth, and clerks and officers of commercial establishments, who have really no rating, or who do not appear upon the grand jury list at all, besides the men that are mentioned in this Act that I refer to, should all be brought into the jury lists.

3823. Should you be inclined to say that the exemptions are too numerous?

No. I do not think they are.

3824. Why should you exempt a civil engineer?

Because of the disastrous condition of things that might happen if he were away. Whenever a civil engineer is really engaged, a half a day or a day's absence from his works becomes a matter that may destroy, we do not know, how much property, or the safety of how many lives. When he is employed he is employed on works, generally speaking, which he must constantly be present at.

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No doubt a civil engineer is often in a condition, especially of late years, in which he could attend on juries freely.

3825. You do not think it would be possible to leave the matter to the decision of the judge?

It would be possible, but his time would be so taken up if a discretion of that kind were given him; he would not have time to do anything else if he had a power of that kind. It would be invoked in every possible case and under every circumstance. In the jury lists at present, the misfortune of them is that the exemptions are not really available, because names appear on the list of those who are specially exempted, and directed by Act of Parliament not to appear on the list, in consequence of the fact that the precept was not altered at the time of passing that last Act. The result is that clerks of the unions return everybody in pursuance of the terms, or the exigency of the precept, although I think the Act itself says that they shall not be returned.

3826. Have you any suggestion to make for remedying that?

No; and I would like to say the reason why. It would be very easy to make a list of the exemptions, or to bind the clerks of the unions for the present year to do so; they are paid for the names, and that was done advisedly; you might very easily get rid of the present exempted names, but you would be incurring the danger of the lists not being properly filled up, which is quite as great an objection as the other, and perhaps greater. If you did not make it the duty of the clerk of the union to look out for the names, and keep the list filled, it might become a skeleton of what it ought to be.

3827. If a juror obtained exemption on the ground that he was over age in one year, would it not be possible for the clerk of the union to be authorised from that time forth to exclude him from the list?

I think he is authorised, and I have tried to persuade him that he is; my view of the law is that he is authorised to do so now. They do not do it for some reason or reasons; it may be that his name is worth money.

3828. It is worth 8*d.*, is it not?

I do not know how much, but it is worth something.

3829. Does any other official get paid so much per name?

No; I think only the clerks of unions.

3830. The 8*d.* per name represents the whole expenditure to which the county is put, I suppose?

That is the expense that the county is put to.

3831. I suppose that falls pretty heavily upon the county where a large number of names are included in the list of men not possessing a qualification?

Yes; the jury lists have sometimes, I suppose, a third of the names struck off.

3832. *Lord Privy Seal.*] You mentioned that happily the party cases have diminished, a great deal in the north?

In Derry.

3833. Can you remember the time when they existed to such an extent as to affect the jurors?

Yes, I think I can. I think they might affect them now, if they existed.

3834. They would be affected now, you think?

I do think so; on that one subject, in the north, I think the juries might be affected.

3835. Just in the same way as the juries in the west and south are affected by agrarian cases?

Just in the same way, though not to the same extent.

3836. It is only from the absence of those cases now that the result is satisfactory in Derry?

I think

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Perhaps so; but the absence of party cases would indicate a diminution of such influences. When I say that they might be affected, I think they might be affected in such cases as cases of riot, though not, perhaps, in any cases of grave forms of crime.

3837. You do not think that if a case arose now, it would be adjudged satisfactorily, according to the evidence?

I am sure that the influences that existed in former days exist still, but they do not come to the surface because there is very little, if any, such crime in the county. Such influences must be supposed to diminish in the absence of any party cases in the county.

The Witness is directed to withdraw.

Mr. GEORGE BOLTON, is called in; and Examined, as follows:

3838. *Chairman.*] I BELIEVE you hold the office of Crown Solicitor for Tipperary?

I do.

3839. And you have had large experience in the preparation of cases for trial as Crown prosecutor?

I have had; I was sessional solicitor for Tipperary from 1852 until 1868; and was then appointed Crown solicitor for the county; and in that way I have had a very large experience.

3840. Do you wish to draw the attention of the Committee to the conduct of juries in any particular cases that have come within your experience recently?

I may mention that I was examined in 1874 before the Committee of the House of Commons on the subject, and I brought down the evidence of cases on that occasion to that period July 1874. I have the particulars of a few cases since that I would like to draw the attention of the Committee to, beginning in 1875. The first case was the case of the Queen against Michael Burke and Martin Burke, father and son, for the murder of a man named Scanlan, who was married to the daughter of the elder Burke. The facts were these; old Burke held a farm from Lord Ross; he had one son and one daughter. He was dissipated in his habits, and his rent got largely in arrear, and he got indebted to several people. He and his son quarrelled; the son went to live in Dublin, and after the son had left him, Scanlan married the daughter, paid off the arrears of rent; he paid over 600 *l.* On that being done, old Burke, who continued to reside with Scanlan, wished to resume the mastership of the farm, which Scanlan would not agree to. Thereupon, young Burke returned from Dublin to Parsonstown, and appeared on the scene evidently in concert with his father. On the Saturday evening they were found drinking together in a public-house in Parsonstown. They had not been on speaking terms before for some years. On the next Sunday (the following day), Scanlan went to Mass, but returned about 12 o'clock. In the interval, just before he returned, old Burke was seen to load a gun which was in the house, take it out, and return into the house immediately afterwards without it. Scanlan came home in, say, half-an-hour after that, and was shot dead at his own door from behind a hedge which inclosed the yard. Young Burke was seen by two respectable young men running away from the spot from which the shot had been fired; and immediately afterwards old Burke's gun was found lying at the spot freshly discharged. These facts were proved in the clearest possible manner. There was no contradiction of any sort. The jury disagreed. This was a case in which we could not account for the disagreement. They were people of the same class, and there was no disturbing element except the general feeling which appeared to be springing up at that time, not to carry out the law.

3841. In that case you consider that there was a thorough miscarriage of justice?

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Thorough; so great a miscarriage of justice that the Government had the case tried four separate times, which is an unprecedented thing in Ireland in a capital criminal case.

3842. Was there a conviction at last?
No; every time a disagreement.

3843. Lord *Penzance.*] Was he tried in the same place over and over again?
Yes.

3844. *Lord Privy Seal.*] Where was that?
In Tipperary.

3845. Lord *Inchiquin.*] What became of the prisoner?
He had to be discharged, and he left the country under an arrangement that if he did not go away he would be tried again the fifth time.

3846. *Chairman.*] Was that case commented upon by the judges who tried it?
Very strongly. The first trial occurred in the spring of 1875, at Nenagh.

3847. Lord *Emly.*] Have you got the list of the jurors, or do you know what the qualification of the jury was in that case?
No; I have not got the list in any of these cases. The next case was at Clonmel, in June 1875, where a man named Finnane was tried before Baron Dowse for the murder of Dennis Hefferman The evidence appeared so clear, that when the jury handed in their verdict, Baron Dowse asked them if there was not a mistake; and upon being told that there were no mistake, he gave directions in open court that they should not be allowed to serve again during the assizes, which was the strongest comment he could have made upon their conduct. I have only taken a few cases, because these are only types of the different cases which occur. They are nearly all miscarriages of justice; I have taken some of them as pre-eminently bad, and where the facts are compressible into a small space. In the spring of 1876 a man named M'Grath was tried for the murder of a man named Mulvey. The evidence in that case was that they had some quarrel, that they were seen standing together, that loud words were heard between them, that the sound of a blow was heard, the prisoner went away, and Mulvey was found with his head fractured on the spot, and never spoke afterwards. The prisoner fled to a remote part of the county of Waterford, and the next day got a letter written by a farmer's daughter to his sister, asking what had become of the deceased man; whether he was alive or dead, as he did not know what to do with himself until he had a reply. That letter was intercepted by the constabulary. The farmer's daughter, who wrote it for him, was traced out and produced at the trial. Notwithstanding that, and though there was no contradiction of any sort, the jury acquitted the prisoner.

3848. There was nothing agrarian in that case, was there?
Nothing; but this occurred to me as an instance of a fixed determination not to assist in carrying out the law. Then I come to a case in 1877; this is a very strong case. The prisoner, a man named Ryan, was suspected of being one of a party who had fired at, and wounded, a man named Todd. That led to his premises being searched for arms. Under a heap of straw near his door was found a pistol and revolver, both loaded. The pistol was loaded with what we call slugs, that is, pieces cut from sheet lead. In the house was found a piece of sheet-lead of exactly the same description. Upon the charge being drawn from the pistol, the wadding was found to consist of a piece of the "Dublin Evening Mail newspaper," which the prisoner was in the habit of borrowing from a magistrate who lived in the neighbourhood. In the prisoner's pocket was found the piece of the newspaper from which this wadding had been torn. Judge Fitzgerald, who tried the case, drew the attention of the jury to the fact that not only the pieces of the paper corresponded, but that portions of the words on the wadding actually corresponded with the words on the piece found in the prisoner's pocket; and the jury acquitted that man, notwithstanding.

3849. Lord

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3849. Lord *Penzance.*] You say the wadding of the pistol; was this wadding which had been put in the pistol before it was fired, or afterwards?

When found loaded the charge was withdrawn by the constabulary, and they found that that was the wadding.

3850. That is to say, the wadding actually remained unfired off in the pistol? Yes, and the corresponding piece was found in the prisoner's pocket.

3851. *Lord President.*] And the pistol was found under some straw, close to where the murder was committed?

Close to the prisoner's door; he was charged with having arms in a proclaimed district; he was suspected of having fired the night before at the man Todd.

3852. Lord *Penzance.*] But that is not what he was tried for, as I understand? No, but that led to his place being searched for firearms.

3853. *Lord President.*] He was tried for having arms in a proclaimed district?

Yes; the next case to which I would ask your Lordships' attention, is one at the same assizes, where the prosecutor was attacked by two men, both of whom struck him on the head; one of the blows produced a fracture; the other blow cut him to the bone, producing what is called grievous bodily harm. The two men were on trial; the evidence was perfectly clear against them. The jury from their questions appeared to show that they were making a difficulty as to which blow produced the fracture, and which the other wound. Judge Fitzgerald, who tried the case, told them it was perfectly immaterial, that each man was guilty, no matter which blow produced wound, the one or the other. He saw the hesitation continuing, and to get rid of all difficulty, he said, "Now gentlemen, give me a verdict for a common assault in the case; there can be no difficulty about that." They went into their room, and in about 10 minutes came out with a verdict of acquittal. The next case I come to is at Clonmel, in the spring of 1880. This is a case where two Ryans, father and son, were tried for the murder of a young man. They were all tenants of a Mr. Lyster for a bit of cut away bog or moor land; there was some dispute between them about it, and on the particular Sunday they had been at mass together, at a neighbouring chapel. They lived close together. Their way home led along the same road. They travelled from the chapel, and turned up to their house in company with some 20 people coming from mass. The two Ryans turned up a bye-road to their house, and immediately after the murdered man turned up the same road after them. They had scarcely got into the bye-road, when the 20 people from whom they had parted on the public road, heard screams and cries of murder, and "For God's sake don't murder me," and that sort of thing. They rushed back, turned up the lane, and found the young man stabbed to death in the lane, and saw the two Ryans running away from him. The jury acquitted the prisoner. The evidence was wholly uncontradicted.

3854. Did these people who saw it come forward and give evidence?
I think about 15 were examined.

3855. And gave evidence that they saw this?
No one saw the stabs inflicted; they parted company with the parties just a minute before on the high road, the accused turned up this bye-way, and the murdered man followed them immediately afterwards. Just after this they heard cries in the lane, turned back, went up the lane and found him lying dead in the lane, and the others running away.

3856. Lord *Penzance.*] They had been walking in the road, I think, with the two Ryans?

The Ryans and some 20 other persons with the accused.

3857. They were walking together in a body?
Yes. I examined about 15 of them on the trial to get rid of any difficulty. The result was rather extraordinary; the two Ryans were discharged from the dock at Clonmel in the evening; and immediately on their discharge the whole mob rose up and tried to get at them to drown them. I saw the mob trying to get at them. A large number of constabulary and the Roman Catholic priests saved them; and if it had not been for their interference they would

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would have been torn to pieces. Fortunately for the jury, they escaped and got away while this was going on, or the people would have lynched them.

3858. *Lord Privy Seal.*] How do you explain the acquittal?

I cannot explain it, except in this way, that one of the jurors said afterwards if they had had the slightest notion what the popular feeling was on the subject, they would have found a different verdict. I am only giving you these as specimens; for nearly the whole assizes show really the same sort of thing. The next case I come to is the Queen against Stephen Butler and 10 others. That was tried at Nenagh Spring Assizes, 1881; and that is an extraordinary case. A man named Long held a farm from Major Armstrong, at Farney Castle; he was tenant from year to year; he had no lease, and his rent was 100 *l.* a year. In July 1851 he owed 231 *l.* rent; he was not able to pay; he had another small farm elsewhere; and an arrangement was come to with Major Armstrong that the major would forgive him the 231 *l.*, and in addition would allow him to take away the full year's crop that was growing on the land that year if he would go. That arrangement was carried out. Long took away the crops, and he did go away the following October, after he had severed and got the crops together, he went to reside 10 miles off, at another farm. Major Armstrong threw that farm into his demesne; it adjoined the demesne, so he broke down the fence and let it in, and it remained in the undisturbed possession of the major and his family until the 1st of January last. Long is dead now. On the 1st of January last, a printed notice was posted up in the district, which purported to be a resolution passed by the "Holy Cross branch of the Land League, Stephen Butler, Esq., being in the chair." They cautioned any person against taking the grass of those lands or having anything to say to them; because Miss Long, the daughter, wanted to get back into her father's farm.

3859. *Chairman.*] Thirty years having intervened?

Thirty years having intervened without the slightest interference of any sort. The man was forgiven his 231 *l.*, and he got all the crops of the farm on condition of his going away. But now, her father having been dead many years, Miss Long wanted to get into the farm, and this notice was posted on the 1st of January. Next day this "Stephen Butler, Esq.," who is only a common farmer, assembled with over a thousand people, and with horsemen, and bands and banners, perambulated the boundaries of the whole farm, yelling and shouting and terrifying the neighbourhood. Then they went down to Farney Castle, yelling and shouting in the same way, but the police had got there before them. They were indicted for unlawfully assembling. The facts were proved, and not in any way contradicted; but the jury disagreed. That was at the spring assizes at Nenagh. The case came on for trial at the last assizes at Nenagh.

3860 Lord *Penzance.*] What was the evidence of those persons being there?

Six policemen were there, and saw them, and proved the whole thing; as did also the Misses Armstrong, who were in the house.

3861. And did they identify these people?

Everyone of the people was identified by six or seven people. The only defence attempted was this: that it was a harmless bit of amusement and perambulating by these men. At the last assizes it ought to have been tried again at Nenagh, but we found the jury panel so bad that it was utterly useless to attempt to try it; and an application was made to the presiding judge for postponement on the ground of a witness's absence, and it was postponed, notwithstanding the very strong resistance by the prisoner's counsel, who wanted to have it tried. The reason for desiring the postponement was this: we hoped that there would be a winter assizes, and that the Attorney General would have the power of sending it to the winter assizes; and that is what the parties wanted to avoid, and therefore resisted. They did not want to go to a different county.

3862. *Lord President.*] Where would the winter assizes be held at which they would probably be tried?

That I cannot tell; they have been twice held in Kilkenny, the adjoining county, and twice in Waterford, and they will probably be in Wicklow.

3863. Lord

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3863. Lord *Inchiquin.*] Was this at Clonmel?

No, this was at Nenagh. Now we come to another bad case of a man named Grogan. This we did not try; we were afraid to try it, which I think is rather a worse feature than if we had tried and failed. About 20 years ago his landlord recovered possession of a farm and let it to a man named Quirk, and Quirk was in possession undisturbed for over 17 years, when on the 20th of last December he found his house broken into by a party of armed men, who dragged him out of bed, beat him, and swore him to give up the farm to the man who had been ejected out of it 20 years before; that man being one of the party. The next day the evicted tenant came, and in the middle of noonday turned off Quirk's cattle in pursuance of the directions given the night before that he was to have the farm. We thought it a very bad case, but we were afraid to try it, and endeavoured to get it postponed, and it is postponed. We were certain there would be an acquittal.

3864. Lord *Penzance.*] That stands also for trial at the winter assizes?

Yes. As to the matter I heard mentioned by a gentleman who had been examined here as to the indifference of jurors to evidence and to the judge's charge, it has been getting more marked every day; they do not pay the slightest attention to either the evidence or the charge. And in the case against Pat Kennedy, which was tried at the last Clonmel spring assizes, Baron Dowse, in charging the jury, said, "Gentlemen, you ought for decency's sake to listen to me, although I know you will not pay the slightest attention to what I say." We now come to the summer assizes of the present year at Nenagh; there were 30 cases for trial at these assizes. In three cases convictions were obtained; they were for larcenies and paltry cases, in which there was no question. In four cases the accused submitted, and were allowed to stand out for judgment; in four the jury acquitted; and in two they disagreed on the clearest evidence, and the Crown counsel, with the assent of the judge, who saw what was passing around him, adjourned all the other cases to try and get them to the winter assizes. We then went to Clonmel summer assizes, which is the other end of the county, and there we had some verdicts, which were as bad as any I have ever heard. One case was tried, Tobin and Power, for manslaughter of an uncle by marriage of one of the prisoners. They were living in the same house; as very often occurs, disputes arose between them as to who would be master of the place, and the servant man and the accused struck the poor old man heavy blows, one with a stick, and the other with a heavy sweeping brush. The sweeping brush was the last thing he was struck with; he fell on the floor, and remained insensible until next day, when he died. The jury acquitted the parties upon the allegation that the deceased might have fractured himself by the fall.

3865. *Lord Privy Seal.*] How do you explain that verdict?

It is on account of a fixed determination not to carry out the law; that is the basis of the whole thing. At those assizes 167 names were returned upon the jury panel. I went through the names most carefully, and I have a very intimate knowledge of the county, and had the county inspector of constabulary to assist me; and we came to the conclusion that there were 12 names on the panel who would try a case fairly, and give fair weight to the evidence. That is 12 out of 167, the county inspector would only make 11; and as to the rest we were thoroughly satisfied there was not a man on the panel but would acquit under any circumstances, no matter what the evidence was.

3866. That last case that you mentioned had nothing whatever of an agrarian character about it, I understand?

It had; it was a fight about land, as to which should be the owner or master of the farm; the old man was the uncle of the accused, I believe; the accused was a young active man, standing well with the country fellows, and that sort of thing.

3867. It was not a case between landlord and tenant?

No; I am coming now to cases of the kind.

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3868. *Chairman.*] When you made this examination of the jury panel, and arrived at the conclusion that 12 men only were fit to be trusted with the trial of a case, upon what grounds did you arrive at that conclusion?

From my knowledge of the parties who were on it; I found all the rest were land leaguers.

3869. You had reason to believe that they were connected with an agrarian organization?

Certainly. Now I am coming to two cases which I think will show you, beyond all doubt, that it is thoroughly useless to expect a conviction in this county. The first I will ask your attention to, is what is called the Kilross riot. In that case two bailiffs were serving law papers in the neighbourhood of the Kilross Constabulary Barrack. They found that the country people were assembling, and they fled to the Kilross Barrack, where they took refuge at about 12 o'clock at noon. There were then but four constables in the barrack, and the man in charge very properly despatched one of them for assistance to the town of Tipperary, which was some six miles off. The man got to Tipperary safely, and a constable and five men were sent out to relieve the place. I should tell you that the crowd followed the bailiffs to the barrack. They assembled round it, and began to demand the bailiffs to be given up to them. They were not given up, and the crowd got more violent; shouting and yelling, and throwing stones at the barrack, and endeavouring to break into it, but they did not succeed. At about six o'clock in the evening relief came to the barrack in the shape of the constable and five men from Tipperary. When those constables were seen approaching the barrack the mob turned their attention from the barrack. They ran to meet the relieving party, and met them with a shower of stones, cutting one of the constables very badly in the head and injuring some of the others. However the constables got into the barrack; after they were a short time in it, the stone-throwing commenced again, and the constables determined to disperse the mob, and sallied out to charge them, but were driven back by another shower of stones, one of them having two teeth knocked out. They remained inside, and the crowd outside continued yelling, shouting, and throwing stones; they killed a dog in the neighbourhood, and tied a cord round its neck, and dragged it up and down before the barrack to show what they would do with those inside. Mr. M'Carthy, the resident magistrate, and Mr. Lopdell, sub inspector of constabulary, got uneasy, not having heard from the relieving party, and they turned out a body of military consisting of 50 men, and proceeded to the place, and arrived there somewhat after one o'clock at night. When they were approaching the barrack, they saw a dense mass of people around it. They divided the military into parties, put them on the grass, so that they might be able to approach without being heard, made a rush, and 22 of the fellows were taken prisoners; and shortly after 26 others were identified and summoned. The whole party were returned for trial; they were all identified by from five to six constables as having been at the place from 12 o'clock in the morning, and at different intervals from one, two, three, four, five, and six o'clock, and caught in the act at night by the military. They were put upon their trial, but the jury would not agree; there was not a shadow of defence made, and yet the jury would not convict. That was bad, but the next case, if possible, was worse. There was a large party of constabulary protecting a process-server; they were attacked by a very large mob; they drew up in military array on the top of a hill with bayonets fixed, and so on, until a relieving force, headed by the Honourable Martin Joseph French, one of the resident magistrates, came to their relief, and drove away the mob. They were stoned; they knew the parties attacking them; they were all from the same neighbourhood. We had a party of them on trial. Every man of them was identified as having taken an active part not only in the mob; but no man was put on trial except he had committed some overt act, such as throwing stones, or endeavouring to wrest a rifle from the constabulary, or something of that kind. They were all identified, each by several persons, but the jury acquitted. We gave up trying any more of the cases, and we applied to the presiding judge, Baron Deasy, who is a very mild constitutional judge, to postpone them; he said he could not shut his eyes to what was passing round

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round him, and would adjourn the rest of the cases, and he did adjourn them. That is what we have come to in that county. That brings the cases down to the last few days.

3870. I observe that when you were examined before the House of Commons' Committee some years ago, you drew their attention to a number of, I will not say equally scandalous miscarriage of justice, but still some very scandalous cases which had occurred previously to 1875?
Yes.

3871. And you have continued that catalogue up to the present time?
I have.

3872. It would, therefore, appear that in the district with which you are most familiar this misconduct on the part of juries is not to be explained by any accidental or temporary circumstances?
Certainly not; it is a deliberate determination on the part of juries to resist and frustrate the law.

3873. Do you regard that as being a determination to resist the law generally, or only a particular part of the law?
To resist all laws generally, with the exception of laws relating to larcenies. It is a most extraordinary thing that there is no difficulty whatever in getting convictions for robberies or larcenies, because in Tipperary those offences have always been regarded as disgraceful. That is what they say amongst themselves. If you cross-examine a man, and ask him, "Were you not convicted?" He will say, "Yes, I was; but thank God it was not for anything disgraceful."

3874. But the crimes which are considered not disgraceful are not merely crimes committed by members of the class who occupy land against persons more or less connected with the ownership of land; some of these cases which you have described are disputes between the different members of the same family, I understand?
They are; the feeling is not at all confined to offences against landlords; any offence against the person, or any violence, is regarded in the same light, as not being a crime.

3875. Whether the violence is or is not connected with a land dispute?
I think it is a matter of great indifference; it is no doubt rather intensified if it is connected with land; but the prospect of getting a conviction is nearly as remote, whether it is or is not connected with land. For instance, dealing with the ordinary assaults between the humblest classes, where there is no disturbing element, in the shape of land or anything of the kind, but merely their own feuds, it is almost impossible to get a conviction, no matter how bad the assault may be. I have known the case of a man who was proved to have had eight wounds in the head and his life endangered for a considerable time, and the very utmost that could be got was a verdict for a common assault.

3876. Would it follow then from what you have said, that no mere alteration of the law, as between landlord and tenant, would lead to a different line of conduct on the part of the jurors in those cases?
I am satisfied that the jurors of Tipperary are so demoralised that any alteration of that kind would have no appreciable effect. I look upon them as thoroughly demoralised.

3877. Are we to understand that in Tipperary there is a very extensive Land League organisation?
Very extensive. As evidence of it I may say that out of a jury panel of 167 I do not think there were 20 men who were not members of the League.

3878. Known to be members of the Land League?
Known to be members of the Land League.

3879. Earl of *Derby.*] And do you think they were all voluntarily so; because it is supposed many become so by intimidation?
I believe a few people have become members through intimidation, with a

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view of saving themselves from annoyance and their property from injury; but the great majority have become so voluntarily.

3880. *Chairman.*] May we take it that you had grounds for complaining of the conduct of the jurors prior to the appearance of this agitation; but that since its appearance your grounds for complaint have become much more extensive?

That is so from the change in the jury laws down to the present time. I have had the strongest grounds of complaint, but those grounds have been increased enormously within the last two years, and I look upon the fact of the judges of assize going down to hold trials as the greatest mockery and farce; and worse than that; it is an expensive proceeding, and it is only educating the criminal classes into the knowledge that whatever crime they commit they can do so with impunity. They see these things occurring every day, and are quite sharp enough to understand it, and do understand it.

3881. Do you consider that, on the contrary, if those classes once become persuaded that the commission of crimes of this sort would be followed with immediate retribution, that would have a deterrent effect?

I think it would have a great effect; but it will take a long time before the law can be got into proper order.

3882. You have stated that in some of the cases you have mentioned a new trial is about to take place in a different venue?

I have.

3883. Do you think it is in that direction that we must look for a remedy for the state of things which you have described?

I have endeavoured to think the matter over as well as I could, and I see no other course which I could recommend. As to abolishing trial by jury, I look upon that as out of the question, unless in the most extreme case. Until everything else has failed I do not think that that would be tried or ought to be tried; but I do think that increasing the qualification of the jurors very largely, and change of venue, is the only chance of remedying the difficulty.

3884. Raising the qualification, you mean?

Raising it enormously.

3885. Have you any precise idea as to the point to which you would raise it?

In Tipperary we have at this moment 2,660 names on the jury panel. You may call them a standing army. It is quite an absurd number; and I think the qualification in that county ought to be raised to something like 100 *l.* a year.

3886. For common jurors?

For common jurors.

3887. Would that give you a class of jurors who would be exempt from these influences?

Certainly not; it would improve the class, but it would not give you a class exempt from the influences I have mentioned.

3888. Then you have no confidence that by merely raising the qualification you would prevent the miscarriage of justice?

It would get a better class, and I would hope that in some time we might come back to a better state of affairs. But at present I do not think that the mere raising of the qualification to any amount would effect what we seek.

3889. If the present crisis continues in its acute state, you do not think that any mere alteration of the jury qualification would prevent a total failure of justice.

That is decidedly my opinion. There was a plan running through my mind which I was determined to suggest to your Lordships, whether there would be anything in it or not. It is this, to go to some extent on the lines of the winter assize by grouping two or three counties together, raising the qualification first very

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very considerably, and bringing the jurors from the different counties. The effect of that would be to give a larger field to select from, and it would remove the jurors from local influences.

3890. Taking your own county, for example, supposing it was grouped with one or two of the adjoining counties, do you think the assize held in an adjoining county would be beyond the reach of those influences?

Not beyond the reach; but still it would be less subject to them; because, according to what is occurring in my mind, the jurors would be brought from the three different counties. That would give the Crown a body of men to select from, which would give a better chance of getting a fair class of jurors.

3891. Some witnesses have suggested to us that the qualification might be raised in the different counties as high as was consistent with keeping on the jury list a sufficient number of names to form the necessary number of jurors; what is your view as to that?

That was my view in 1874. I recollect that that is exactly what I suggested, that first of all the number of jurors requisite for the county should be ascertained, and then that you should take them from the highest qualification that would give that number.

3892. Do you attach any importance to suggestions which have been made with a view of securing the presence in the jury box of some members of the better educated and more intelligent classes?

Yes; I think it would be desirable to have as many as possible of that class in the jury box.

3893. Would you propose to add to the existing qualifications any qualifications of the kind which are sometimes spoken of as fancy qualifications?

I do not think I can suggest more than I did in 1874; I do not think more would be of much use.

3894. Is it the case that a change of venue leads to considerable delay in the trial?

It does; for instance, cases that should have been tried at the summer assizes will not be tried till the winter assizes, in November or December.

3895. During all that time the crime remains unpunished?

It does.

3896. Lord *Penzance.*] You have expressed yourself strongly upon the subject of what you spoke of as abolishing trial by jury; have you considered whether it might be practicable or not to suspend trial by jury in particular places for a particular length of time, or is that equally objectionable, in your opinion?

It is the last thing I would resort to; I am sufficiently constitutional for that.

3897. Suppose such a system were introduced as was indicated, I see, in 1822, whereby the sessions were in particular session from day to day, so long as a particular county was proclaimed, a power was given to the Serjeant-at-law, or one of the Queen's Counsel who was to preside over the court of sessions, and the other magistrates who formed the court, to exercise all the jurisdiction of general gaol delivery, and to try a number of offences which are specified in the statute without a jury, those offences being all put together in the category under the general name of "idle and disorderly;" that system appears to have been applied to these matters, such as "being unduly out of their place of abode at night," "their houses being searched at night, and they found to be absent," "administering illegal oaths," "circulating notices of meetings, calculated to excite riots," "possession of arms"; I think these were the offences, all of which were submitted to this tribunal, with the power of sentencing to seven years' transportation. Many of those particular offences are not, perhaps, applicable to the present day; but there are many which you have mentioned which might possibly come under a similar category; would a system of that sort be entirely objectionable?

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That would be very strong, and I should not like to resort to it until I had tried milder means; if necessary I would resort to it, but not in the first instance.

3898. I gather that the result of your opinion is this, that you would first try the effect of changing the venue?
I would.

3899. And in the ultimate result, if that did not succeed, you would be prepared to accede to something of this kind?
Certainly; I would give the Attorney General unlimited power to change the venue on his own *fiat*; at present, if the parties desire to change the venue, they must go before the Queen's Bench, make a case upon affidavit; then there are counter affidavits, motions, and things of that sort, at a great expense and waste of time.

3900. And it is not perhaps very easy upon affidavit to give sufficient grounds, though those grounds may exist in reality?
Precisely. We personally know every person in the neighbourhood, and a good deal about them; but could not state that information on affidavit.

3901. Therefore, you would entrust this matter to the Attorney General?
Certainly.

3902. Lord *Inchiquin.*] Do you think that any change of venue or raising the qualification would really produce satisfactory verdicts at the present time?
I think if it did not produce satisfactory verdicts it would improve the present state of affairs. I think change of venue and increase of the rating qualification of jurors would in all probability lead to tolerably satisfactory results.

3903. You think it might?
Yes. I am judging to some extent from my experience of the winter assizes; because at the winter assizes that I attended we did get some verdicts of a satisfactory nature that we would not have got in the county where the crime was committed.

3904. If you are not prepared to go so far as a commission of judges, is there any other recommendation you could think of?
I would certainly extend the jurisdiction of magistrates very largely. That was mentioned by some other gentleman, whose views I was not aware of before. I would also, as a consequence, recommend the increase of the number of resident magistrates, and take them either from the legal profession or constabulary officers who had made that branch of the law, which they would have to administer, a special study, and passed an examination in it. I think they are a very meritorious and highly deserving body, and would be very competent to act in that position if they would only apply themselves to acquire a little technical knowledge of the law. I would recommend that to be tried.

3905. Lord *Penzance.*] Have you at all thought what further offences you would confide to the magistrates besides those you allude to now?
I would give to the magistrates jurisdiction in all classes of cases, with the exception of a few which I would except. I think that would be the shortest way of doing it. I would except all the graver crimes, such as murder, manslaughter, assaults with intent to endanger life, rape, and offences of that class, which would not be very numerous when you come to deal with them. I would give magistrates jurisdiction in all other classes of cases; and I think there is one class of case in which, as soon as possible, they should get jurisdiction, that is in re-entry by parties evicted by legal process. The practice at present is this, the sheriff or sheriff's officer takes possession and gives it to the landlord or his baliff; the place is locked up; and that very night the party evicted goes back into possession and keeps it. I know at this moment a case where a man re-entered the very night possession

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session was taken; he was sent for trial, tried, and of course the jury acquitted him. There could not be evidence got of sufficient force to satisfy the jury; and he and his family are still in undisturbed possession. I know another case of a similiar kind. It is necessary to give some evidence of forcible possession and forcible retainer. The man went back into possession, and evidence was given of the house having been barred and locked up for protection. One of the jurors asked whether there was not a great storm and some of the windows might not have been blown in, and might not the man have got in in that way. The witness said it was quite possible, and the jury acquitted the man; and in a case of that kind the same process of ejectment has to be gone through again.

3906. So you think that a magistrate ought to have jurisdiction to deal with the matter at once?

Particularly so; because in that case a court of competent jurisdiction has settled the right of the parties, and the proper officer, the sheriff, has carried out the decree. There can be no grounds for not giving this jurisdiction.

3907. *Lord President.*] You said something about the resident magistrates. In Tipperary are there many proprietors who are magistrates who reside upon their estates?

In speaking of resident magistrates, I meant what are commonly called stipendiaries.

3908. I understand that?

There are a great number residing on their estates; a very large number.

3909. Does their administration of justice give satisfaction in itself?

I think their administration of justice is as pure as could well be hoped for, and is so known by the people and so understood. Of course a fellow brought up and sent to gaol is not satisfied; but the public at large are.

3910. You are speaking of the administration of justice by the local magistrates?

The local magistrates.

3911. You do not think it necessary to resort more to resident magistrates, or stipendiary magistrates?

I would resort to them to a certain extent if the jurisdiction of the local magistrates was increased, and I would do so for the purpose of relieving the local magistrates from any odium or blame.

3912. Then the odium or blame does have some influence on the local magistrates, does it?

I am afraid it might, if you increase their jurisdiction largely; and I would like to associate with them men who had some legal knowledge to guide them.

3913. Do you think it would be possible to get resident magistrates now, who are barristers, at the present salaries?

I think not. I think there should be some increase in the salaries.

3914. Have you ever known any local magistrates influenced or pressed by the people?

No; as far as I know the local magistrates, they are thoroughly above anything of the kind.

3915. Can you point to any particular reason why these Tipperary jurors are so affected?

It is the fashion of the county; that is the only reason I can give for it.

3916. Is it due to the existence of a revolutionary or Fenian feeling?

I am afraid there is a great deal of that under the surface in Tipperary.

3917. And that it is made use of in all cases connected with the land?

Yes, I am afraid it is.

3918. You gave us some remarkable cases where juries had broken down; are those exceptional cases; at 1875 you begin?

Yes.

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3919. That was a quiet time then, was it not, and there was nothing exceptional in the state of the country?
There was nothing exceptional. I did not think the Committee would go through a long list of cases; the result of every assizes is very much the same, and I selected those as typical cases. This break down commenced immediately after the present Jury Act. I only commenced with these cases in 1875, because I had brought down the others in my former evidence to that time.

3920. There were cases of the same kind before that time in which juries convicted, were there not?
Yes, some.

3921. But very few?
But very few.

3922. Before the change in the jury laws Tipperary was always a difficult county in which to carry out the law, was it not?
It was exceedingly difficult to get evidence in it; but, before the jury laws, there was no difficulty in getting juries to convict, when proper evidence could be obtained.

3923. Is there any difficulty in getting evidence now?
There is great difficulty.

3924. A great many cases break down from want of evidence, you mean?
A vast number. In speaking of cases in which juries broke down; I only speak of those where there was ample evidence; but there are a great number of other cases that never come before the juries, owing to the want of evidence.

3925. Lord *Inchiquin.*] Are the witnesses intimidated?
Very often.

3926. *Lord President.*] There has always been a practice, in certain cases, of having the witnesses up to Dublin, in order that they might be removed from improper influences, has there not?
Yes; but that can only be done where the witness consents to go voluntarily.

3926.* It used to be frequently the case, did it not?
It used to be frequently the case, because from the moment that the witness gave the information, the witness felt that he or she was a marked person, and was looked upon as degraded, and not to be associated with, and so the witnesses generally consented to be taken charge of by the constabulary.

3927. *Lord Privy Seal.*] I suppose, under the former jury law, and before 1871, there must have been many of the larger farmers on the jury list of the same class who would come in under your proposed rating qualification?
A few, but not many.

3928. Not many, do you think?
No; there were more of the educated and gentry class.

3929. I presume that the whole of those on the list did not belong to the class of the gentry?
Almost all; the great majority. They were all freeholders, or persons having qualifications of that kind.

3930. But the freehold may have been a very trifling qualification in reality; of 40*s.* freehold?
No; they should have had 10*l.* freehold, at all events; that was the very lowest qualification.

3931. I thought it was any freehold?
No, not under 10*l.*

3932. Do you say that there were very few of the tenant farmer class on the old jury list?
I do.

3933. I suppose

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3933. I suppose there is a very large body of gentry in Tipperary?
There is a very large body of small gentry, having an income of 500*l.* or 600*l.* a year

3934. All owners of land?
All owners of land, residing on their own property. There is a large number of that class in the county. I may tell your Lordships that the jurors of Tipperary, previous to the change, were looked upon by the judges as gentlemen of the highest, the most intelligent, and the best class of jurors in Ireland. I have heard judges say, they could scarcely descriminate between the Tipperary jurors and the Belfast merchants, as a tribunal to try any important case.

3935. I suppose you have a large special jury list in Tipperary?
I think there are 375.

3936. Do you think there would be jurors enough on that list to perform the ordinary duties of petty juries?
There would not be enough for the assizes and quarter sessions. There are 15 or 16 sessions in the year.

3937. Lord *Inchiquin.*] There might be enough to try agrarian cases?
Yes.

3938. *Lord Privy Seal.*] I suppose in addition to that there would be an ample number to supply a certain proportion of jurors upon the petty juries, supposing such a change in the law were to be made?
There would, certainly.

3939. Have you ever thought of that idea?
Of having special jurors only, do you mean?

3940. No, I do not say that; I mean a provision something like what exists under the laws of Scotland, of requiring the presence of a certain proportion of jurors from the special jury list upon the petty jury?
No, I have not considered that.

3941. The reason given for it is, that it would make the presence of a certain number of men of a superior class necessary and invariable upon the petty jury; would you attach any importance to that?
That is very desirable, but you must get rid of the low class that is on the jury panel at present They go to the sessions and to the assizes with their minds made up to go into the jury box and acquit, not caring one farthing for the evidence. And that is one of the reasons why the better class of jurors are unwilling to serve with them, and, in fact, make every exertion to avoid serving with them. They say, "We will be locked up with these men, and they will not reason with us; they will not discuss the case in the jury box.

3942. You say that the number of jurors created by the present qualification is quite unnecessary?
It is absurdly large.

3943. It is quite beyond the requirements of the case you mean?
It is not only beyond the requirements of the case, but it frequently defeats one of the objects, as I understand, of the Bill. One of the objects of the last Act, as I understand it, was to train up those men to take part in the administration of the laws. The result of having such a number as this is, that a man is only summoned once in three or four years to attend, and when he comes to the assizes he is of such a class that he is not allowed to serve; he is therefore put by, and then he is not summoned for three or four years more, and therefore gets no opportunity of learning, even if he would learn.

3944. Have you anything to say as to the suggestion made by many witnesses here, that a grand jury at quarter sessions might be dispensed with?
That is a view I have entertained a very strong notion upon for the last 20 years and more. I think they ought to be dispensed with; and I have been confirmed in that by others, and amongst them the late Sir John Howley. He was the

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late Chairman of Tipperary, and occupied that position for a great many years, and was an exceedingly good criminal judge. I think it is the greatest possible mistake to continue the grand jury, for the reason that you take 23 of the most intelligent jurors out of the district, and put them in a room to do an act which is not of the slightest importance to either the Crown or the prisoner. As Sessional Crown Solicitor, which I was for 16 years, I do not think that in that time there were six bills ignored by the grand jury.

3945. Then you think that the existence of the grand jury is unnecessary for the fair protection of the interests of the accused party?
Perfectly. I would not be disposed to abolish the grand jury at the assizes, because some time or other great Constitutional questions may arise between the Crown and the subject. Speaking of the old institution, I would not be disposed to abolish it, except at quarter sessions.

3946. You see no necessity for doing that?
Not the slightest.

3947. You would dispense with it at the quarter sessions, and maintain it at the assizes.
Certainly; I do not think there would be the slightest difficulty.

3948. *Chairman.*] If you were to raise the qualification for the common jurors as high as you propose, would the common jury list be composed then, to any considerable extent, of men of the farming class?
There would be some; a sufficient number to prevent its being exclusive, which I would object to as much as any man.

3949. But your list would be made up of the larger farmers and persons of a superior station?
Yes, precisely.

3950. In short, under such an arrangement it would be scarcely possible to say that a man was tried by his "fellows," to use a familiar expression?
No, it would not. A matter has been touched upon before your Lordships as to the right of challenge, and I certainly have the strongest feeling that that ought to be reduced to six. I do not think I would deprive the prisoner absolutely of all right of peremptory challenge, but I would reduce it down to six. I think the origin of it was when the sheriff had the nomination of the jurors, and when the Crown, it might be said, had the liberty of the subject in its hand through its agent; but now, owing to the change that has been made, that difficulty is removed. The right of challenge is seldom exercised by a prisoner for a legitimate reason. The Crown never puts by a man except for a legitimate purpose; that is, a man who it is known will not try a case fairly.

3951. Would you make it six in felony as well as misdemeanour?
I would make it six in all cases.

3952. And leave to the Crown the same right to order jurors to stand by?
I look upon that as absolutely necessary. It is never exercised by the Crown except under the strongest pressure. It is one of the things that gives me the greatest pain, when I have to stand up and put by jurors; and that is the feeling of a number of other Crown solicitors who I have spoken to upon the subject.

3953. It is the only means you have of excluding a man who is objectionable?
It is the only chance of excluding him, and we have to do it every day.

3954. Lord *Emly*] I suppose you would not limit the right of challenge in capital cases?
No, I would not.

3955. *Lord Privy Seal.*] Is that order to stand aside resented by the parties?
No, it is not, because it is thoroughly well understood that it is necessary. As your

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your Lordship has touched upon that, I may mention that at the very last assizes there was a man being put on his trial who was defended by counsel and attorney; his attorney was sitting close by me, and I would not put by any one. I saw it was of no use. And he said, "What are you doing, Mr. Bolton; are you neglecting this case?" I said, "What do you mean?" He replied, "You are not putting by anyone." I said, "No, I am not." And he said, "Do you want to turn the thing into ridicule?" Actually the prisoner's solicitor was soliciting to me to put by some of the jurors, they were so bad.

3956. Does it ever happen that persons whom you order to stand by have to serve in the end?

That has never occurred to me. It may occur that you may put by such a number you may have to go back upon the panel, and take the first who answer, but that has never occurred with me.

3957. Your panel is so large that that is not likely to happen?

Precisely; and that gives rise also to a very great grievance in my mind. In order to have the chance of getting some tolerably decent men, the sheriff always gives a very large panel. I mentioned 167 at one assizes; then we had 162 at the Nenagh assizes, and so on. The result of that is that a number of men are brought a long distance; they are men of very humble means, and men who cannot afford it; and they are kept there with the positive certainty that they will never serve on a jury.

3958. *Chairman.*] Have you any idea how many jurors were actually used at that particular assizes.

I cannot tell you. In one case I recollect putting by 82 off the panel.

3959. Lord *Inchiquin.*] But the sheriff has a complete discretion as to how many he summonses, has he not?

He has. I believe if he did not summon a tolerably fair number, the judge of assize would have the power of fining him, and compelling him to enlarge the panel, but that never occurs. I would like to say that at present the exemption by reason of age extends to anyone who is 65. I would make that 70 instead of 65. I see a great number of men come into court and claim exemption because they are 65, who are quite fit to serve.

The Witness is directed to withdraw.

Mr. CECIL MOORE is called in; and Examined as follows:

3960. *Chairman.*] I believe you are a Solicitor in practice in Dublin?

I am now Registrar in the Common Pleas; I was a Solicitor practising for 34 years in the country.

3961. Would you state to the Committee what your special opportunities of watching the operation of the jury laws have been?

I was 18 years Sessional Crown Prosecutor of the county of Tyrone, attending 16 Crown sessions every year and two assizes, and acted as sub-sheriff and clerk of the Crown.

3962. What opinion did you form during that time of the conduct of the Tyrone juries?

The Tyrone juries, I should say, are exceptionally good, even at the present time. Judge Fitzgerald had the honour of being presented with a pair of white gloves there at the present assizes.

3963. You make no exception when you say that?

In Tyrone the present working of the Act is remarkably good; but there are exceptions and improvements that I consider should be made upon it.

3964. Has that part of Ireland been free from agitation of late?

Particularly so. At the winter assizes the man or two men (I really forget

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whether it was one or two), who shot at Mr. Atkinson, were sent from Cavan to the winter assizes at Tyrone, and were convicted without hesitation.

3965. *Lord Privy Seal.*] Was it a crime of an agrarian character?
Yes. Mr. Atkinson went to ditch off a farm from which a tenant had been evicted, and which the people had turned their cattle on, in fact made a perfect common of it; and he and his son were pursued.

3966. *Chairman.*] In Tyrone there has been no exceptional strain upon the jury system, and consequently there has been no miscarriage of justice, had there?
No, not in any case that I am aware of. There are sometimes cases which arise in which there is local feeling that has affected them. I am speaking now of many years ago, and may instance the murder committed by Holden, the policeman, who shot his serjeant and nearly killed his sub-inspector. He was tried two or three times (I think three times) before he was convicted. An excitement was got up in some manner there, but that had nothing to do with the present system, and that kind of thing does occur in every county. I recollect in the County Monaghan, in 1868, a man named M'Kenna, immediately after the elections (in fact, on the night of the election), shooting a man in the hotel where I was staying myself. A sub-inspector was dining with me at the time, and we caught the fellow and put him into the coffee-room. The other man was carried off. The case was tried at Monaghan, but the jury disagreed there. The prisoner was sent to Dundalk and tried, and although he was taken on the spot with the pistol in his hand, the jury acquitted him.

3967. What was the explanation of that?
It was party feeling; religious feeling. The party shot had been accused by this M'Kenna, at the previous 12th July, of throwing stones. The man who was shot had been a witness on the occasion; and on the night of the election I suppose M'Kenna took advantage of this. He came into the house and shot the man in the hall.

3968. I think you were on the point of suggesting that, although you had no grave cause of complaint of the conduct of the juries, there were some modifications of the jury system which you are prepared to recommend?
I consider that there are some matters that could be amended; for instance, the revision of the jurors' lists. The plan of the revision might be greatly improved.

3969. Would you state what your suggestion is?
I would compel the collectors to be more strict in the returns they make. I believe the sessional Crown Prosecutor does attend now (in former times he did not), the sub-sheriff should also attend; I would require them to attend at the revision, so that they might be able to check the revision books. I consider jurors are returned over and over again, although struck off the list or disqualified.

3970. That points rather to remissness on the part of those entrusted with this duty?
Clearly. I would be inclined to enlarge the qualification to a small extent in some counties, and to a great extent in others.

3971. No change in the law would be necessary to improve upon that, would it?
Certainly not. I think the present law is far superior to the former one as to the sheriff forming a panel.

3972. Would it be advisable to make it a rule that when a person has once been exempted from the jurors' list, the clerk of the union should not be obliged, or should not consider himself obliged, to return the name of that person on the next year's list?
I consider that the clerk of the union has no right to return it again at present, although their practice is to do so. I think it is contrary to the law that when once a man has been exempted by proper authority from the list he should ever be returned again.

3973. The clerk of the union includes the name in his list next year, and we are

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are told that he has a right to a small fee on account of every name so included?

So I have heard, but I am not personally aware of it. I believe the law is quite the contrary, and that he should never be returned again.

3974. Your first suggestion is that the list should be more carefully revised?

Certainly.

3975. What would be the next suggestion?

I would increase the qualification slightly in some counties, and in others largely. I quite agree with Mr. Bolton that in the district he speaks of, and in all such districts, unless it is increased largely it will effect no change whatever.

3976. Should you be disposed to say that the qualification should be raised as high as was consistent with obtaining a sufficient number of jurors?

Certainly, I think so. I think we should have the best class we can, yet having abundance at the same time. There are many instances where men of a lower legal qualification are rather better jurors than some of those who yet possess the higher qualification.

3977. I presume that the principle is more or less admitted in the Acts now in force, because the rating qualification for house property varies considerably in different parts of Ireland?

Precisely,

3978. Would you apply the same principle of rating to land and tenements?

No, I would not.

3979. Have you anything to add to that?

We have some 2,000 odd jurors of the county of Tyrone, and that number is a great deal more than is necessary for the duties to be performed. And as I heard several questions put about special jurors being included with the common jurors, as I understand the law, special and common jurors are all upon the Crown panel, and the special ones also appear upon a second panel. If they are not acting on a special jury, and are called in the Crown Court, the fact of their being on the special panel does not exclude them from acting as common jurors; it might happen that the jury would be composed of probably more than half special jurors.

3980. I think the suggestion was that there should be always on every common jury a certain proportion of special jurors?

If they were called upon as special jurors, I think it would rather create a discord than otherwise, you would find the common jurors and the special jurors pulling in different directions, I think. I quite agree with Mr. Elrington, and I have long thought so, that where there is a perverse judgment, and notoriously so, the judge by his certificate should be capable of having it tried over again. As, for instance, before Judge Lawson in Kerry there was a case recently which he intimated was a case of that kind. But I would be entirely against doing away with trial by jury. I have known instances in point. There was Mr. Bateson's murder in Monaghan, where two Kelly's were tried on two or three occasions, and on two occasions two jurors stood out against 10, and the late Chief Justice Lefroy and Baron Green, I think, charged the jury for a conviction. There were two gentlemen of position, one of them a magistrate for the county, and the other a Mr. Ryan, a miller, who declined to find a verdict, and there were 10 to convict; and afterwards there were three other men hanged; the Kelly's were not the right men.

3981. *Lord Privy Seal.*] They were not the guilty parties?

They were not the guilty parties; three others were hanged at the assizes. In the case lately of Mr. Montgomery, the Sub-Inspector who murdered the banker's cashier, I think he was tried a third time in the county of Tyrone by

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reason of a juror; one stood out against eleven; a man who notoriously held the opinion that no man should be hanged for anything; and he went on the jury with those opinions, and of course would find no verdict. It is nearly impossible for officials to keep all such men off a jury. Therefore I would be disposed to increase the jury in Crown cases to fifteen, and let twelve of them find a verdict. Then with regard to challenges, I quite agree with Mr. Bolton that six challenges would be quite sufficient for any prisoner. Supposing you are trying three prisoners together, each having twenty challenges, as they have now, they can strike off sixty from your jury list at once; totally tying up the hands of the Crown from their right of challenge, unless they postpone the trial, in fact. The prisoners have the right to join in their challenges, but they never exercise it, because it would curtail their challenges from 60 down to 20, if they joined. I consider one of the most material things of all would be that there should be a proper revision made, and the rating qualification increased; this, with the giving the right to the Attorney General to change the venue, would have a powerful effect in bringing matters right. I think the trial at the winter assizes, in Tyrone, in the case of the attempt on Mr. Atkinson's life proves that strongly, because they could not possibly have had a conviction in the county in which it was done.

3982. Do I understand that you fear that if there were to be necessarily a certain proportion of jurors from the special list upon the petty jury (which we understand is the case in Scotland), the petty jurors would be inclined to vote against the special jurors?

I think there would be an unsatisfactory feeling between them; in some counties I am satisfied it would be so. I do not think that it would exist much in a county like Tyrone, because a very large proportion of the jurors there are on the special list, although not on the panel of the day. On the book they are special jurors, and are qualified as special jurors; and in the county of Armagh likewise the same thing exists.

3983. Supposing the rating qualification were very considerably raised in the counties that you know, do you think it would largely exclude the tenant class from the jury list?

Not at all. In the counties I speak of at present (Tyrone and Armagh), with the present qualification the jurors are almost all nine tenths of them of the farming class, and persons residing and carrying on business in the towns. There are very few gentry ever upon any of our juries in Armagh, Tyrone, and Donegal.

3984. Do very few persons of that class serve upon juries?
Very few, upon the Crown juries.

3985. Why is that?
They are not anxious to serve; and if they can avoid it they do not serve.

3986. So long as a jury is obtained, their services are not enforced?
They are not enforced, of course.

3987. Would you be glad to see such persons acting on juries more largely than they do?

I think it would be better if they did, certainly; but the class of jurors we have in some of those counties are really so intelligent and such sound men, that I think it is well to see them on a jury.

3988. Then, I presume, in the counties you speak of, there is not much reason to raise the qualification?

No; very little reason in the counties, except as regards having an unnecessary number on the list. There is one thing in the present framing of the books that I think could be greatly improved. The present system is that of taking a name for each letter till you get down to the end. For instance, in Tyrone the letter "M" is probably four times as numerous as the letter "F." Then, at the latter part of the jury list, you have all M'Farlane's, M'Mullen's, and so on; then you may get a whole family of M'Farlane's on one jury, and a whole

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a whole family of M'Mullen's on another jury; and all those that come at the lower part of the letter "M" will form the jury of the county; whereas if the book was framed with so many in each page, and you took the first name on the first page, the first name on the second page, and the first name on the third page, and so on through the book, regardless of what letter you were in, and not commence the pages with a particular letter, and run it out, but commence anywhere consecutively, that difficulty would be avoided.

3989. *Chairman.*] Would you divide the names into groups?
We will say there are 25 in each page; beginning with the letter A., of course.

3990. And each group would be exhausted simultaneously?
Each group would be exhausted simultaneously: you would get to the end of the book and to the end of all the letters at the same time.

3991. *Lord Privy Seal.*] How would you form these groups?
I would put 25 in the jurors' list upon one page, beginning with the letter A.

3992. By haphazard?
No; first A. and then B., and so on through the alphabet. Then I would take the head line all through to the end, then the second line all through to the end, and so on; and the result would be that you would have the book exhausted all at the same time instead of one letter running on while the other letters were not used at all.

3993. The safeguard against anything like selection would be just the same?
The safeguard against anything like selection would be just the same, if not greater, which probably it would be.

3994. *Lord President.*] You can remember, I suppose, in Tyrone, when there was a good deal of party feeling?
Yes, in particular districts; Dungannon and Coal Island, and these districts.

3995. Used each jury to do their duty in cases of that kind?
Sometimes they did not?

3996. In old times?
In old times and up to the present time; those are cases that I say are exceptional.

3997. And even now you cannot be quite sure of a jury in all party cases?
You really cannot. The jurors are pretty well known by the officers of the court now, and with a careful exercise of that knowledge we may get a pretty fair trial.

3998. There are not very many of those cases, are there?
There are not; they are greatly grown out.

3999. You alluded to Sub-Inspector Montgomery's case. I think we heard from Judge Barry that the first of the trials was under the old system of striking juries?
No, it was not; it could not be, because it was in 1874, I think.

4000. I have reason to know that he was convicted in 1873, and that he was hung in 1873?
Yes, your Lordship is quite right.

4001. The second trial was when the law was first altered by Lord O'Hagan's Act, and the third after it was partially altered, and then it was amended again?
Yes.

4002. Have you ony experience of the working of juries in Dublin?
I have had a good deal since I came to Dublin. Judge Barry lately said

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that he supposed the next jury he would have would be a jury of dead men, because the summonses go out still against men that have been dead three or four years. I have to issue the warrants when they go out of the Common Pleas Division for the men who do not attend and are fined; and I get back one-third of them from the constabulary or Dublin Police Office, marked "dead two years ago;" "dead three years ago," and so on.

4003. That arises from some fault in the revision, does it not?
It is from some fault in the revision, no doubt.

4004. Is it from the revision not being frequent enough, do you think?
No, I think it arises from following the plan that his Lordship spoke of here about returning them again. They have not been served personally, and in this way it arises, particularly in Dublin; the summonses are sent through the post office to the jury, and if the juror be dead and his family open the letter there is an end of it; they do not care about the warrant issuing, or anything else.

4005. There was some suggestion made here that when the sheriff made out the list he should send it to the Collector General or some other officer, and that if there was any name inserted of a person who was dead, or of a person who had left, then another name should be put in in the order laid down by the Act, and that in that way the list should be revised; what would you say to that?
I think that would be a capital plan provided it could be carried out well, but the Collector General at present could do a great deal in that way through his collectors, because the dead men should have been off the list long ago.

4006. It is rather due to neglect on the part of the Collector General, you think?
Undoubtedly, or the officers under him.

4007. Do you consider that the Dublin juries now can be trusted with a party case, or a case of a Fenian or agrarian character?
I am afraid it would be very doubtful.

4008. In criminal cases, for instance?
No, not in criminal cases at the present time where they arise from party feeling.

4009. In that case it would be very little use changing the venue to Dublin?
I would give the Attorney General perfect power of changing the venue where he thought proper. I think it would be a great mistake to change it continually to any one particular spot. There are many counties in which such cases would be quite as fairly tried, if not more so, than in Dublin.

4010. And, otherwise, you would make the service of jurors rather oppressive in Dublin?
Clearly.

4011. Have you known many cases in which the venue has been changed to Dublin, where the jurors have neglected to do their duty?
No, I do not personally know of many cases.

4012. There have been some, you think?
I believe there have been. The venue was changed in the case of Mr. Boyd's murder the other day, but I do not consider that that was a case of frustration of justice.

4013. Before that, had there been other cases?
I think there were such cases before I came to Dublin; I do not recollect any since I came to Dublin.

4014. When was it that you came to Dublin?
At the latter end of 1876.

4015. *Chairman.*]

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4015. *Chairman.*] You spoke of changing the venue to other counties; do you consider that there are many other counties in Ireland where you could be sure of the jury doing its duty in a case having a decided agrarian or political complexion?

There are several; there are the counties of Tyrone, Down, Antrim, Londonderry, and Fermanagh.

4016. Would those mostly be Ulster counties?

Yes, all Ulster counties.

4017. *Lord President.*] Would you include Wexford or Carlow in that opinion?

I am not acquainted with the southern counties.

4018. *Chairman.*] But in speaking of the counties you have given us, would you make the same observation as to all the Ulster counties?

They are all northern counties that I refer to.

4019. Your suggestion would involve the transfer of cases from the south and the west?

Yes, I believe the power and organization of the Land League at present in the south and west is such as to influence all juries to such a degree that you cannot regard them as fit to try a case involving a question of an agrarian or political character.

4020. *Lord President.*] Where would the Cavan case, to which you referred, have been tried if it had been tried at the summer assizes?

Do you mean the case of Mr. Atkinson?

4021. Yes; where would it naturally have been tried?

I really do not know the town at which they would have tried it.

The Witness is directed to withdraw.

Adjourned to Friday, 29th July, at Twelve o'clock.

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Die Mercurii, 3° Augusti, 1881.

LORDS PRESENT:

Lord President.	Lord Monck.
Lord Tyrone.	Lord Emly.
Lord Inchiquin.	Lord Ardilaun.

The MARQUESS OF LANSDOWNE, in the Chair.

Mr. JUSTICE LAWSON, is called in; and Examined, as follows:

4022. *Chairman.*] You are, I believe, a Justice of the Court of Common Pleas in Ireland?
Yes.

4023. How long have you held that position?
Since the year 1869.

4024. I observe that you gave evidence with regard to the operation of the Irish Jury Laws before the House of Commons Committee in the year 1873?
Yes, I did.

4025. Without taking you back over that evidence, I may remind you that you expressed an opinion that in some respects the Act of 1871 had not worked altogether satisfactorily?
Yes, I thought so very clearly.

4026. Principally upon the ground that many of the jurors who were admitted under it were unintelligent and unfit to discharge the duties expected of them?
Yes, certainly.

4027. Since that time considerable alterations have been made in the jury law, particularly in 1876; would you kindly state to the Committee whether, in your opinion, those alterations have dealt with the imperfections to which you then adverted in an efficient manner?
I think they have not removed those imperfections; there have been some improvements, but they are not at all such as would be necessary, I think, to get a satisfactory class of jurors; at the same time it is very different in different parts of Ireland. On the north-east circuit, which I generally go every year, I very rarely have any occasion now to find fault with the conduct of juries, very rarely indeed. They are generally very good.

4028. Lord *Emly.*] What counties are you speaking of?
The north-east circuit, Antrim, Down, Armagh, Louth, and Monaghan.

4029. *Chairman.*] But we understand from you that as regards other parts of Ireland you are not able to make that favourable comment?
In other parts of Ireland it is absolutely impossible to obtain a conviction now for an offence connected with any agrarian matter.

4030. Before we come to the question of the conduct of the juries, would you allow me to ask what class of persons, as far as you are able to observe, now come into the jury box on common juries?

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Almost always farmers and publicans; any other class are very few indeed. Occasionally there is a gentleman or a shopkeeper, but the great mass are farmers and publicans.

4031. We have had a great deal of evidence pointing to the conclusion that a variety of circumstances contribute to keep out of the jury box that, I am afraid, rather small minority of jurors who do not belong to the lower and least intelligent class; is that your impression?

Yes, I think the respectable jurors are rather coy and shy of attending. I observe very generally at the Commission Court in Dublin that the great merchants and persons of that kind do not attend the juries. I suppose they prefer being fined to coming there.

4032. Is it not also the case that the right of challenge conceded to the defendant operates to keep out of the box the better class of men?

Yes, every respectable looking juror is always challenged now; you know at once he will be challenged when he appears, if he is a well dressed man.

4033. In 1873 you made certain suggestions for the improvement of the class of jurors; amongst others, I think you recommended an alteration in the qualification; the qualification was raised subsequently to that advice of yours, was it not?

It was.

4034. Do you think it was raised high enough?

I think it is very difficult to answer that question; under existing circumstances, I think raising the qualification would not be of any real advantage in those counties to which I have referred; I mean to say that, taking some of the counties on the Munster Circuit, even if you had the power of absolute selection, you could not expect to get a jury who would do their duty.

4035. Should you go so far as to say that in those counties the mere addition to the jury panel of a few names of more intelligent and better qualified jurors, would not prevent the minority being overwhelmed by the other class?

I think, as long as the present state of feeling exists in those counties, it would not be of any avail whatever.

4036. Before we leave that part of the subject, let me ask you this: contemplating a time when the present excitement was not so prevalent, would it be possible by any means to secure the attendance of the better class of jurors who, we understand from you, are a little coy about attendance, and a little indifferent to the imposition of a fine?

I do not know any mode in which you could compel their attendance, except by enforcing a fine?

4037. We have been told that if a sufficient number of jurors prove to be in attendance, and a jury is obtained, the fines are not enforced against those who fail to answer to their names; is that the case in your experience?

It is very often the case; at the following assizes these cases of fines are brought before the judge, who has a power of remitting them; they generally make a plausible excuse for not having attended, and very frequently the fine is taken off.

4038. But I think some witnesses have gone so far as saying that the fines are never enforced unless there is a failure to obtain a jury?

That is not my experience.

4039. May I understand that you would be not unfavourable to increased stringency in the imposition of fines?

I should be very favourable to it. I think it is quite right that the respectable classes should be forced to bear their part in the administration of justice. I should be quite favourable to any plan of that kind.

4040. Passing then to the conduct of the common juries, are you able to make any statement to the Committee as to your experience with regard to the way in which they do their duty?

Yes;

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Yes, I had, on the last circuit in the county of Kerry, the most remarkable experience I ever had since I became a judge. I had better, perhaps, mention one or two cases to the Committee, they are extremely instructive.

4041. If you please?

The first case, in which I was greatly startled with the result, was a case in which three men attacked a house at night near Tralee, with their faces blackened and disguised; they were knocking at the door calling to have the gun brought out. While they were engaged in this operation three policemen came up, and the head constable instructed his men each to capture a person; he, himself, captured his man, and held him; the other two persons escaped. One of them, at least a man who was said to be one of them, was taken a very short time after near the place; he was put upon his trial, and along with him the man whom the head constable detained. He arrested him, and brought him to the barrack; there was no doubt about his having been there engaged in the commission of the offence. Both men were put upon their trial together, and I took it for granted that the jury would probably acquit the man who was not taken in the actual commission of the offence; but that, as a matter of course, they would find the other man guilty, for whom no sort of defence could be suggested; but to my astonishment they acquitted both of them.

4042. Was any defence set up?

No, no defence was set up, except that it might be a hoax, and that they were men of good character, and did not intend to do any harm, or something of that sort.

4043. In that case the accused person was caught red-handed?

He was caught red-handed. I said to the jury "this is the man before you now whom the constable caught at the door and took to the barracks, he has been brought from the barracks here, and there he is before you." That was of no avail whatever. When that verdict was announced the court-house rang with applause from all the spectators present. I was informed that on the way down from the court-house the men were followed by a shouting multitude, who cried out "We knew they would not dare to find you guilty." That is case No. 1. Now to give another case, which is a remarkable one, four or five men came to a house at night; they knocked up the inmates, they took the man of the house out of his bed, put him down on his knees and cut his ear; they were persons well known to the inmates of the house, and were living not very far from them. The inmates of the house identified them all; but they were all acquitted.

4044. Was any defence set up in that case?

Yes, there was the usual fabricated *alibi*. There was a member of the family got to prove that each person slept in bed with him the whole night, and never got up; that is the usual thing as an excuse to the jury to acquit. But no honest person could entertain any doubt about the case. The plain result of that is, that it is a public announcement of a most emphatic kind to the people of the country that they may, with the most perfect impunity, attack a house at night, and although they may be identified by everyone of the inmates, they will be sure to be acquitted. And of course when that state of things exists, law and order merely depend upon the forbearance of the person who may be tempted to commit the crime.

4045. May we understand that you quote these three cases as cases typical of the prevailing state of things in that part of Ireland?

I think so, quite. I know that a similar case occurred before my Brother Barry, in Cork. I was on circuit with him, and was in communication with him upon the subject. I know the state of things occurred in Cork; so much so that the Crown counsel abandoned, in fact, all the rest of the prosecutions; it was found impossible to obtain a verdict.

4046. Lord *Monck*.] Were those two cases you have mentioned in Cork?

They were in Kerry; I only speak about Cork cases, from what I heard from my Brother Barry, and what I read in the papers; I was not Crown judge there;

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there; I do not think anything so very bad as that ever occurred in my experience before. I have had extremely bad acquittals in Limerick, but I think I never had two such bad acquittals as those I have stated. I must say for myself, that I think it is very difficult to blame jurors in a county like that. Of course the great majority of them are sympathisers with the offence, but those who are not sympathisers are intimidated; they live in lonely places, and if it should become known that they were in favour of finding a man guilty, where there is a disagreement, they would know very well that their persons and their property were liable to be attacked. And how can you protect them in a mountainous country of that kind. It is perfectly impossible. It is a very trying thing for men in that position of life to be called upon to do their duty under such circumstances, extremely so.

4047. Would you kindly state to us how far this misconduct on the part of the jurors has attracted your attention; is it only since a comparatively recent date, or have you observed it ever since 1871?

I have observed it more or less all that time in all those counties which we are speaking of; but it has reached an extent now that I think it never did before.

4048. But you limit that statement to the trial of cases of a particular kind, do you not?

I do limit it to the trial of cases of a particular kind. During the whole of the last time I was on the Munster Circuit, I believe there were only two convictions before me; one was the case of a woman who was indicted for concealing the birth of a child; the other was the case of a man charged with stealing a saddle; that was the total number of convictions; all the rest were either acquittals or disagreements. A very remarkable case occurred in the town of Killarney. The Marines, a very respectable body of men, were attacked in the most shocking manner in the streets of that town, and one of them was stabbed in two places in the shoulder, by a man who was clearly identified by constables, by Marines, and others, as having been the man who did it. There was another man tried with him, who only threw stones, or something of that kind. This was a most remarkable case. He was as clearly identified as any man could be; and the only suggestion made was this: a publican was produced from the town of Killarney, who said that he was standing at the door, and looking at the thing, and did not see this man do anything; and there were also a great many other witnesses from Killarney who said they did not see him do anything; but there was the fact that he was identified by the Marines and the constabulary. In that case the prosecution enjoyed the triumph of having got a disagreement of the jury, and not an acquittal.

4049. Are you able to draw any line between the cases in which the jurors will do their duty, and the cases in which they will not?

I think they will do their duty in all larceny cases and ordinary cases of that kind; but they will not do their duty in anything connected with the land agitation.

4050. We have been told that in assault cases they are very apt to disregard the evidence; do you find that to be the case?

Yes; in Limerick they always disregard the evidence in assault cases; I have observed at all times that they will not find a man guilty of assault in Limerick, no matter how clearly the offence may have been proved; or very rarely so. I have had some convictions there; but as a general rule they will not do so. I do not consider that of so very much importance; they assault each other.

4051. And there is, perhaps, not much to choose between the two parties, you think?

No, there is not much to choose between the two.

4052. As one witness put it to us, the failure of justice may be almost said to begin

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begin and end with the land; cases arising directly or indirectly out of land disputes; is not that so?

Certainly.

4053. Therefore we may take it that the position with which we have to deal is something of this kind; you have in the first place a community which is an agricultural community, generally speaking; you have an organisation which pervades that community; you have the fact that most of the crime which is committed is of a more or less agrarian character; you have to consider the probability that in the jury box there will be persons connected with the organisation of which I have spoken; and, finally, you have the fact which you have just mentioned, that even those jurors who might not be so connected, would find a verdict in accordance with the evidence at the peril of their lives, their property, or their business?

Certainly. And so long as this kind of agitation pervades the community, I do not think you can reasonably expect that state of things to be altered. Of course, when they come back to their normal condition all will be right; but so long as they are pervaded by that agitation in which they all take an interest, and in which they sympathise, you cannot expect anything better.

4054. And that state of things has led to this result that, however strong the evidence is, you can feel no confidence that a common jury will have regard to that evidence?

Certainly. And, in my opinion, sending those cases for trial and sending the judges round to try them, with a certainty of a failure of justice, is not only a useless proceeding, but a great deal worse than useless, because it is the most public manifestation that can be imagined of the impunity with which crime may be committed.

4055. It would be better that the offence should be ignored than that justice should receive a public affront?

I think it would be better.

4056. It is of course our business to consider whether we can make any suggestions for getting rid of a state of things so unfortunate as that which you have described to us. We have received several suggestions; one of those points to the expediency of removing, as often as possible, these cases to a district in which these disturbing elements would not be found to the same extent?

I think that would be an improvement. I may say that the last conviction that was obtained in Ireland for an agrarian murder was obtained before me at Cork, I think. It was the case of a man named Crow, for shooting a carman named Hyland, who was with Mr. Bridge, and he was found guilty. Though really a Tipperary case, the place where the offence was committed was inside the county of Cork, and therefore it was tried in the county of Cork; and it so happened that it was tried by a jury principally composed of jurors from the West Riding of Cork, and they found him guilty. But if he had been tried by any jury from the neighbourhood in which the crime was committed, he certainly would not have been found guilty.

4057. What is the date of that case?

I never can remember dates well, but I think it is three or four years ago. It was the last conviction of the kind, and the man was executed. He was caught on the very spot.

4058. Therefore, in that case, practically the venue was changed?

Practically, he was tried by persons who had no connection with the place; many of them came a distance of 70 miles from the place.

4059. I believe it is not unusual at present for the venue to be changed when there is reason to suspect that the fair trial will not be had in the local venue?

The Court of Queen's Bench have the power of changing it; but it is a power not very often exercised.

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4060. Would it, in your opinion, be desirable that it should be more often exercised?

I think the Attorney General on his own responsibility ought to have the power, in a case that he thought fit, of directing that the trial should take place in another district, and by a special jury. I would certainly suggest that. That would only apply, of course, to serious and grave cases, such as I have spoken of now; it should not be done in light cases.

4061. I suppose there are not a great many venues in which you would feel much confidence of getting beyond the reach of these influences?

I am sorry to say that the number is every day becoming smaller and smaller. I observe that at the last assizes, in the county of Wicklow, where, as Lord Monck knows, we used to think the jurors first-class men, from the reports I have seen in the papers, it appears that they have acquitted in all the cases; so that the area is certainly extending.

4062. Are you able to point at this moment to any venues to which a trial might be removed with confident anticipation that you would get justice by so doing?

I cannot say that I would have a very confident anticipation. It would be a very extreme measure to bring an offence from Cork to Antrim to be tried. I daresay that might do; but it would be a very extreme step to take.

4063. It would involve a great deal of expense, I suppose?

It would involve a great deal of expense and hardship upon the man and his witnesses, and so forth. You must consider all that.

4064. Should you go so far as to say that if you were to remove a case from the south of Ireland to Belfast, it would be a step nearly as violent as of suspending trial by jury altogether?

I really think it would be a very strong step; I should not at all like it.

4065. Would it not also be the case that if there were to be an epidemic of crime, such as that which we have seen something of lately, the juries in those few districts to which the venue might be safely removed, would find themselves overwhelmed with work?

I do not think they would be overwhelmed with work. I think if the Attorney General even had the power, it is a discretion which he would very rarely exercise; I think very rarely; it would be only in some very extraordinary case that he would do so.

4066. Then does the conclusion rather follow from that, that we must either submit to a continued miscarriage of justice or else look in some other direction for an improvement?

I think so; I do not think that so long as this state of feeling exists you can, by any process of altering the class from whence jurors are taken, reckon on getting a satisfactory jury.

4067. May I ask your opinion on a suggestion which has been made to us frequently, to the effect that many of those cases arising out of the prevalent agitation might properly be dealt with by the local magistrates, and not sent on for trial by jury?

I think that is a very good suggestion. That was forced very much upon my attention at the last assizes for the City of Cork; and I observed upon it my charge to the grand jury. In fact it brought the thing to my mind in a stronger way than it was ever brought before. There were very bad riots in Cork, what were called the park riots, there were 48 persons arrested and brought before the magistrates; and the city magistrates, with great good sense, dealt with all those cases summarily; they sentenced some of them to four months, and some of them to three months, and some of them to two months' imprisonment. The result was that the city was pacified. As I observed to the grand jury, if, instead of dealing summarily with those cases, they had been sent for trial before me, they would have had 48 prosecutions, all proving abortive, they would have had a bad state of feeling kept up, and they would have had a triumph over the law either

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either by a disagreement or acquittal; whereas by the prompt action of the magistrates the punishment, though comparatively light, was quite effective. And in my opinion prompt and certain punishment, even though it is of a comparatively light character, is quite sufficient to deter from the committal of crimes of that kind, whereas parties know that if sent forward for trial, either at the quarter sessions or at the assizes, they will be acquitted. The magistrates think they are doing a great deal if they return them for trial at the quarter sessions or the assizes; but that only means that they will be all acquitted.

4068. We have been told that the magistrates themselves are not disinclined to be rid of the responsibility of trying these cases; and that on the other hand they have been encouraged to avoid it by an intimation from the Executive Government that cases of this sort should be sent on for trial by jury; have you any reason to be aware of that?

No, I have not; I know I commended the Cork city magistrates for taking upon themselves the responsibility of dealing with that case; and I suggested that it might furnish a good hint to the Executive Government; I said so at the time, not thinking I was going to attend here to give evidence at all, but simply on consideration of the case.

4069. Therefore you are in favour of the local magistrates dealing with cases with which they do not now always deal, or generally deal?

I am in favour of extending the summary jurisdiction.

4070. I was going to ask you that question; would you, in addition to that, enable them to deal with offences with which under the present law they are not able to deal?

Yes, I would; but I would limit the amount of punishment which they could give. In which the cases usually occur, such as taking forcible possession of a house, injuring property, attacking houses by night, and what is called Boycotting, and threatening; they are offences that would be quite adequately punished, for all practical purposes, by a sentence (in a very bad case even), say of 12 months' imprisonment. Those are cases that might be very well dealt with by the magistrates; and if persons knew that they were liable to get 12 months' imprisonment from the magistrates for committing these offences, that they would be very careful about it.

4071. Twelve months' imprisonment would be in excess of what the magistrates are now able to impose, would it not?

It would.

4072. Would you advise that the magistrates should be empowered to inflict a sentence of 12 months' imprisonment in certain cases?

Yes, I would; or, instead of giving it to the magistrates at petty sessions, it would probably be the better thing to give it to the quarter sessions without a jury.

4073. Lord *Monck.*] That would amount to the conferring of a power of summary conviction on the court of quarter sessions, would it not?

It would confer a power of summary conviction on the court of quarter sessions for a higher class of offences, and a class involving a heavier punishment than the justices at petty sessions can now deal with. That is a very simple matter; and there would be as fair a trial by the county court judge and the magistrates there as could possibly be imagined; a perfectly fair trial.

4074. *Chairman.*] Do you think that that course would be preferable to allowing the local magistrates, possibly with the assistance of a stipendiary magistrate, to deal with those cases themselves?

I do; I do not much like to extend the power of the local or stipendiary magistrate. I think when they are associated at quarter sessions with the chairman, they possess much greater weight and influence than when sitting at petty sessions.

4075. Lord *Tyrone.*] Have you come across, in your experience, any cases of

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local magistrates who, under the existing state of the country, have been afraid to act?

I have heard of such cases, but they have never come under my personal knowledge at all.

4076. *Chairman.*] I suppose referring these cases to the quarter sessions would involve a certain amount of that delay which you are on the whole anxious to avoid?

It would not involve much delay. Quarter sessions sit every three months; four times a year; so that there would not be much delay.

4077. May I ask you whether you are of opinion that by taking steps of this kind you would be doing enough to deal with the present unfortunate state of things in some parts of Ireland?

I think you would. I am not in favour of very heroic remedies. I think we may hope that this state of things is exceptional, and will pass away. I should be very sorry indeed to recommend the total abolition of trial by jury, in consequence of this, what I will call, exceptional state of things; but such a remedy as I suggest now I think would fairly meet it.

4078. I suppose the remedy, which you propose, would involve an alteration of the law, would it not?

Certainly, it should be done by Act of Parliament. I may mention, that at present the law in England and Ireland differs with respect to the power of the court of quarter sessions. The class of cases that can be tried by quarter sessions in England is defined by Act of Parliament; they are not defined in Ireland. The quarter sessions have power, I believe, strictly to try any case. Of course it rests with the Attorney General to say what cases they are to try, and to send them there for trial; but I believe, in point of law, they have power to try any case.

4079. Lord *Monck.*] Those cases would be tried by a jury?

I am only now suggesting that these peculiar, and I may say exceptional cases, growing out of the present state of things, might fairly be dealt with by the chairman and the magistrates without a jury, limiting the extent of punishment which they might give. That would be a matter of detail, of course, which the Executive Government would duly consider.

4080. *Chairman.*] If such a change in the law were made, should you wish to see it applicable only to those districts which were in an exceptional state?

I think you should make it applicable, not to districts, but to offences of that character; that is to say, where an offence of that character occurred it should be in the power of the Attorney General to direct it to be tried at quarter sessions by the chairman and magistrates without a jury. Supposing that such a state of things was beginning to occur in a particular county, that would put a stop to it, in my opinion. It is with the class of offences that you must deal.

4081. And for the more serious offences you would be disposed to rely upon the change of venue, as I understand?

I would be disposed to make no change as to the more serious offences, except to facilitate the change of venue, and the getting of a special jury. No one would like to propose that a very serious case should be tried without a jury.

4082. Cases are now sometimes tried, are they not, with a jury struck under the old system?

Yes, I think that is a bad system. The mode in which that is done now, as I understand it, is this: there are 48 names returned; each party attends before the master, and strikes off 12. We always were in the habit of considering it a matter of clear law that those 24 men who were left were the persons from whom by ballot the jury were to be drawn; but it has now been decided that after striking off 12 the traverser has a right to begin his challenging again, and

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and to object to six more, that gives him practically the selection of his own jury, which is a most extraordinary state of the law.

4083. *Lord President.*] When is this power of going back to the old system adopted?

The Court of Queen's Bench have established the practice; in all cases where a trial is brought into their court by *certiorari*, as it is called, they direct a special jury to be struck under the old system. The great, if I may call it great, at all events late, "State trial," as it was called, was a remarkable example of that. I am not sure whether the cases tried there recently were dealt with in the same way; but I know that the State trials were so dealt with.

4084. That is when no grand jury is employed?

Yes; where the Attorney General sends up the criminal information.

4085. Those cases do not go to a grand jury before being submitted to the petty jury, do they?

No, in that case they would not; but I rather think in any case, even where an indictment is found by a grand jury in a county, and that is removed by the Attorney General by *certiorari* into the Court of Queen's Bench, they require the jury to be struck under the old system; I will not be confident of that, but that is my impression.

4086. Lord *Emly.*] Are they obliged to do so?

That is the decision that the court has made.

4087. Can you say why it is that the Court of Queen's Bench select this particular way of trying the case?

I really cannot; I am not a member of that court, so I do not know. I may be wrong. My information to you now is only from what I read and see.

4088. Lord *Inchiquin.*] But an application must be made to the court to allow it to be done, I suppose, or does it rest with the judge?

I think an application is made to the court to have it tried by a special jury, and then the court tries it with a special jury struck under the old system.

4089. *Lord President.*] Is that upon an application by the Attorney General?

The application may be made by either party.

4090. *Chairman.*] I want to come back for one moment to the question of challenges, if you please; the defendant now has a right to twenty peremptory challenges, has he not?

In none but cases of felony.

4091. And six in cases of misdemeanour?

Yes.

4092. Do you see any reason why that distinction should be maintained?

I do not; there is no real distinction now between felony and misdemeanour, except in name. I think the challenge of six is quite sufficient in any case.

4093. And it would deprive the accused person of that power of keeping out of the jury-box any jurors whom he thought were likely to be independent, and act upon their convictions?

Yes; I think the rule of six is a reasonable rule, because it is quite possible in either a civil or criminal case there may be some men who have some personal feeling towards the plaintiff, or defendant, or traverser; and it is a very fair rule that he may object to six persons. But I think when you come to 20, it is quite different. Then when you put two men upon their trial together, as I have often seen, there are 40 challenges; and if you put three upon their trial together, there are 60 challenges; and it is utterly impossible to get a jury.

4094. Lord *Emly.*] The larger right of challenge was given when the offences were treated as more serious, was it not?

It was when the cases to which these challenges apply were capital offences.

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4095. *Chairman.*] Would you preserve a larger number when the offence was a capital one?

I would not; I would have six in every case.

4096. I observed that in 1873 you expressed a favourable opinion as to taking the verdict of a majority of the jurors; is that an opinion which you are still inclined to hold?

I do not think that would be of any real service now; I do not think it would meet the present state of things.

4097. It occurs to one that in some cases where, under the present arrangement, a jury might disagree, owing to the presence in the jury-box of two or three independent jurors, if you took the verdict of the majority you would get an acquittal; would not that be the result?

Certainly, that would be so. Besides, that is the question which involves the whole Empire; you could not have unanimity of juries in England and non-unanimity of juries in Ireland.

4098. Lord *Monck.*] You have it in Scotland, have you not?

Yes, but I am speaking of England now. The system of Scotch law is different from ours, and is most unfavourable to the prisoner.

4099. *Chairman.*] There is one peculiarity in the Scotch system as to which I should be glad of your opinion. We understand that in Scotland there are a certain number of special jurors upon every common jury taken from the special jury list; would that be an improvement that you would like to see introduced into Ireland?

I do not think so.

4100. Not under ordinary circumstances?

I think not under ordinary circumstances. I find the common juries now in the county of Antrim, both in civil and criminal cases, extremely good. Perhaps that is one of the most favourable counties in Ireland.

4101. There is just one other stray suggestion, as to which I should like to know your opinion. It has been suggested that possibly the verdict of the juries should be taken by ballot, that each juror should vote "guilty," or "not guilty," secretly; what would you say as to that?

I object to that altogether.

4102. That does not commend itself to your judgment?

No, I would abide by the ancient lines of the constitution as long as we can. I do not like these novelties at all.

4103. What I understand your evidence to come to is, that there is in certain parts of Ireland, and with regard to offences of a particular kind, a complete break down of justice; is that so?

Yes.

4104. And that in your opinion that unfortunate state of things, if it continues, can only be terminated by having recourse in those particular cases to a special tribunal not now admitted by the law, which might try these offences without the assistance of a jury?

I think so.

4105. Lord *Emly.*] You spoke of the juries in the north as generally giving satisfactory verdicts. I think you said the north-east circuit; would you apply that to party cases?

No, I would not apply that to party cases. At the same time there is a great improvement of late in party cases in the North. I have seen very good verdicts of late in party cases, very good verdicts indeed. At one time it was very bad. It has much improved; and I think party feeling does not run so high as it used to do there.

4106. With regard to the change of venue, it has been suggested, I think, by some of the witnesses that have appeared before this Committee, that in conjunction with greater facilities for the change of venue, it would be desirable that in very extreme cases the judge should have the power of refusing to receive a verdict; what would be your opinion on that suggestion?

I should

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I should object to it altogether. That is a novelty; I should not approve of that at all.

4107. Have you had much experience of Dublin juries?
Yes, a great deal.

4108. And do you think, in such cases as you have been speaking of, that they are to be trusted?
You mean in agrarian cases?

4109. Yes.
They are not as good as they were.

4110. Does it not occur to you that if you were to have a great number of those cases brought up before them, they would become very reluctant to try them?
I do not contemplate a great number of cases being brought up at all. I think it is a discretion which would be very rarely exercised.

4111 Do you not think that the very fact of having the venue changed, at all events in very important cases, to any particular place would be likely to affect the conduct of the juries in that place?
I do not think so, if it was really an important case, and the only object was to get a fair trial.

4112. Were you quite correct in your statement with regard to the jurisdiction of the quarter sessions in England; take cases of rape; have they power to deal with such cases?
I think the jurisdiction in England is limited by statute. I cannot give the names or the classes of offences; but it is defined by statute in England, and it is not defined by statute in Ireland.

4113. You spoke strongly as to the desirability of reducing the number of peremptory challenges that the prisoner now has; would you in any way reduce the power of the Crown as to the number of jurors that they might desire to stand by?
I would not.

4114. You would leave the power of the Crown unlimited, and you would reduce very much the power of challenge that the prisoner now has?
I would. I remember perfectly well what occurred on the trial of Montgomery at the Tyrone assizes. The first time he was tried he was tried before me. The Crown set aside, I would be afraid to mention how many jurors; and it was absolutely necessary to do so, because they were unintelligent men and not fit to try the case. I would not limit the power of the Crown in that respect. In Limerick I have seen the power of setting aside very largely exercised, so much so that I did not really like it at all; and, after it was all done, the residue was not a bit better than those that were set aside. It has a bad appearance You ought not to bring a number of people into the jury box who are, on the view of them, totally unfit to try a case, in order that they may be set aside.

4115. Lord *Monck.*] You mean totally unfit from want of intelligence, do you not?
I do; not from sympathy with crime, or anything of that sort, but from want of intelligence. We all know what the former class are in Ireland. It is not very reasonable to expect an uneducated man to try a case intelligently; you ought to leave uneducated men out of the jury panel if you can.

4116. Lord *Emly.*] I think you said that even if there were an absolute power of selection, you could not in Munster rely, in the present state of feeling, in getting fair verdicts?
I do not think you could.

4117. Would you apply that to the old juries that there used to be in the county of Limerick?
I would not; but where will you get them now; you cannot get them.

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4118. Your words, I think, were even if you had an absolute power of selection; with that absolute power of selection you would of course be able to get the best of such jurors as there are there; were not they to be relied upon, and did not they do their duty in most difficult times?

They were always exceedingly good, but you could not have an absolute power of selection. Though I used that expression, you could not have it; and no one could propose that.

4119. It has been suggested by many of the witnessess here that it would be desirable to get rid of grand juries at quarter sessions, for the purpose of bringing a more intelligent class of jurors into the jury box; I suppose you would not, at all events, be unfavourable to getting rid of grand juries at assizes?

I think you might very well get rid of grand juries at quarter sessions, and be satisfied to put a man on his trial on the return of the case by the magistrates. I think that would be an improvement.

4120. Suppose the country to go back to its normal state, would you consider that the juries might be improved by raising the qualification still higher than it is now, raising the qualification as high as it could be raised consistently with having a sufficient number of jurors?

I think they would be improved. It is a dreadful burden to a man to attend four times a year at quarter sessions. If what I suggest were carried out, the grand juries abolished at quarter sessions and these classes of cases tried without a jury at quarter sessions, the demand for jurors at quarter sessions would be very greatly diminished, and then you would not be obliged to have so many on the panel, and you might get a better class. I have no doubt at all that if we return to the normal state of things there would be no difficulty, without any packing or selection, in getting fair jurors.

4121. Lord *Monck.*] I understand that when this excitement does not intervene the juries behave pretty well in ordinary cases?

I must say that on the north-east circuit they behave extremely well; but on the Munster circuit I do not think they ever do, except in cases of larceny, and the sort of offences with which they have no kind of sympathy. Where they have any sympathy with the offence, they really will not find a man guilty; that is perfectly well known. And I may mention that it is well known that people attend in court to watch what the jurors are doing, and take a note of their names and all about them, and what they are supposed to do; and if a man was on a jury and he disagreed with his brethren, he would be very soon a marked man.

4122. Do you think that any change of the class from which the jury is taken would overcome that feeling?

Not so long as the present state of things pervades the country; I do not think it would overcome it.

4123. Lord *Tyrone.*] I understand you to say that you would have agrarian cases tried by the magistrates at quarter sessions?

Yes.

4124. That includes all classes of agrarian cases, except the extreme case of murder, I suppose?

Yes, of course.

4125. With regard to what you say about special jurors, it has been suggested, as the Chairman mentioned, that it would be an advantage to put special jurors upon the common juries, and to have a leaven of them upon the common juries; I think you do not agree to that?

No, I do not.

4126. Would not the putting of special jurors upon the common juries have the effect of getting, at any rate, disagreements?

It is not a desirable consummation at all to get disagreements.

4127. In

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4127. In a clear case would not you prefer a disagreement to an acquittal?
I think it is very little better. You have a chance of trying a man again if there is a disagreement; but so long as the same state of things exists, what is the use of trying him again; I think it would tend to disagreement to have the classes named special jurors and common jurors. The natural tendency would be to disagree; and that is a bad thing.

4128. You prefer an acquittal to a disagreement, do you?
I would not say that I prefer an acquittal to a disagreement; I do not.

4129. You have made several suggestions as to change in the law of trial; have you anything further that you think of which you could suggest as an improvement?
No, I think not; what I have suggested is intended to meet, I hope, a passing state of things.

4130. Lord *Inchiquin.*] You said you would like to diminish the right of challenge, I think?
Yes.

4131. Would you give the same number of challenges to each defendant in that case?
No, I would have the law as it is now; all the defendants together have six challenges.

4132. Would you give each defendant the same number, no matter how many are put upon their trial?
No, I would only give all of them six challenges; that is what they have now.

4133. I understand that each prisoner has at present 20 challenges?
In cases of felony he has; but in cases of misdemeanour, no matter how many are on trial, they only have, altogether, six challenges.

4134. But in cases of felony would you continue the same number of challenges; that whatever you gave to one you would give to all others, though there might be five or six on their trial at the same time?
I would make the law of felony and misdemeanour exactly the same. The traversers have a right of challenging six jurors in all.

4135. Would you make any alteration with regard to the power of the judge to fine for non-attendance?
I do not think it wants any alteration; the judge has very large powers at the present time.

4136. The discretion remains with the judge?
The discretion remains with the judge. The Jury Act requires us to impose a fine of 40 *s.* on a man who does not answer to his name; and if we find that there is a deficiency of jurors we have the power to increase that, and we very often do so, especially if we find people remaining away.

4137. You would not be inclined to limit the power of the judge to remit the fine?
I would not.

4138. I think the suggestions you make are practically three; first, that you would increase the summary power of the magistrates; secondly, that you would do away with a jury in certain cases at quarter sessions; and thirdly, that you would give the power to the Attorney General to recommend a change of venue?
Not to recommend, but to direct a change of venue.

4139. To direct a change of venue, or, if he thought fit, a trial by special jury?
A special jury selected from the usual special jury panel.

4140. Those are, I think, the whole of your recommendations?
I think so.

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4141. With regard to the first one, I should just like to ask you whether, in case you increased the power of the magistrates, you would leave matters as they are at present, or would you insist upon the presence of either one or more resident magistrates?
I would leave matters as they are in that respect.

4142. You would not alter that in any way?
No, I would not.

4143. Then, with regard to doing away with the juries at quarter sessions, in what cases would you recommend that that should be done; would you recommend that the Attorney General should have the power of saying what cases he thought should be so tried?
Yes, I would.

4144. You would leave that discretion to the Attorney General?
Yes, I should.

4145. In those cases where there was to be trial without a jury, would the chairman, say, have the power of trying these cases alone, or would you recommend that he should have a certain number of magistrates with him?
I would recommend that the law should remain just the same as it is now. The chairman and the magistrates assembled are the bench who try it.

4146. The chairman in that case might try the case alone; he has the power of doing so, has he not?
He has; though the magistrates are there he generally does try the criminal cases alone, I think; it would not be necessary to make any changes in that respect.

4147. Then with regard to your third suggestion, namely, that the Attorney General should direct a change of venue, do you think that the change which has lately been made of having winter sessions has produced a good effect in the way of procuring convictions?
I think it has, decidedly.

4148. You think, for instance, that in cases that have been changed, we will say from Clare to Cork, there has been a decided advantage?
Certainly. I can give a most remarkable instance of that, now you mention it, which occurred at the last winter assizes at Omagh. There was a man found guilty of an agrarian offence, committed, I think, in the county of Longford; it was firing at a Mr. Dudgeon, an agent. It was a very remarkable case; the evidence was purely circumstantial. There never would have been a conviction in that case if it had been tried in the place where the offence was committed; but he was convicted, and most properly convicted, before a Tyrone jury. I think, therefore, that the existence of the winter assizes would diminish the number of cases in which the Attorney General would find it necessary to exercise that discretion at all.

4149. Lord *Monck*] And besides, it exemplifies the advantage of having cases so tried?
It does; the case that I now mention is a most remarkable exemplification of it.

4150. Lord *Inchiquin.*] I think you said that, in the present state of things, no raising of the qualification and no selection of the jury would really have a satisfactory effect?
I think so.

4151. In point of fact, in that case the determination of the Attorney General to have a special jury would not have very much effect?
I am assuming that he changes the venue.

4152. That is to say, you assume that the change of venue is made, and that a special jury is appointed?
Yes.

4153. But

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4153. But the fact of having a special jury would not make any great change?

Yes, it would make a great change; the special jurors are always a higher class of men than the common jurors.

4154. Do you think that in such cases as murder cases, or such cases as serious agrarian assaults, the change of venue and the special jury would prove effectual in the present state of things in Ireland?

I think they practically would.

4155. Then I gather that you would be opposed to what has been recommended by several witnesses here, that the Attorney General should have the power in certain cases not to direct, but to recommend a trial before a commission of judges?

I should object to that. I think the judges have certain functions assigned to them by the constitution, and I do not think it would be advisable to invest them with entirely new ones. If such an extreme step were contemplated as to have a special tribunal created to try cases during the existence of a combination of this kind, it should be a special tribunal *pro hac vice*, and not composed of judges at all.

4156. Lord *Monck.*] You would not object to that?

No, of course not.

4157. Lord *Inchiquin.*] You would not object to a special tribunal?

Supposing Parliament thought fit to enact that it should be in the power of the Crown to direct three Queen's Counsel to hold a special commission without juries for certain counties, it would be a very strong step; but still it would not be a departure altogether from the lines of the Constitution; it would be only an exceptional thing But I think to call upon Her Majesty's Judges to do what they have never been called upon to do before, namely, to act as judges and jurors, would not be a wise thing, and it is not necessary to go to that length, I think.

4158. Still you agree that some step should be taken to ensure the punishment of serious crimes?

I agree that if what I suggest did not prove effectual, the Executive would probably find it necessary to do something else. But I believe that certain prompt and light punishment is much better than the system that we have now, of threatening a man with being sent to penal servitude for life, and after all its ending in an acquittal; he knows very well that he will be acquitted. On the other hand, if what I suggest were adopted he would know very well, that if he came before the chairman and magistrates, and was found guilty, he would get a good smart term of imprisonment.

4159. *Chairman.*] You have, in fact, recommended the constitution of a special tribunal which would deal with those offences, in the shape of the chairman and magistrates?

Yes, I have.

4160. Would you impose any particular limits upon the amount of punishment which they might inflict?

Certainly, I would. I would not give them unlimited power of punishment at all.

4161. Would those limits be prescribed under existing statutes?

No, they should be prescribed by whatever statute you pass to enable the magistrates and chairman to discharge that duty; you should provide that the maximum limit of punishment should be so and so.

4162. Have you ever given your attention to an Act of Parliament which was passed in the year 1872, intituled, "An Act to suppress insurrections, and prevent the disturbance of the public peace in Ireland." The object of that Act appears to have been to enable a specially constituted tribunal to deal in a particular manner with certain offences which were included under the definition

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tion of "idleness and disorder," and then followed a provision bringing particular offences within that description. I presume that your suggestion is something of that sort?

I do not remember the particular Act that you are referring to, but my suggestion is, just to enable the chairman and magistrates, within certain limits, to deal summarily with these cases without the intervention of a jury.

4163. Lord *Inchiquin.*] But murder and serious assault cases would never come before them?

They would not; of course my suggestion is defective in that respect, but I think that, for all practical purposes, it would be found to work very well.

4164. *Chairman.*] Your suggestion is not defective in this sense, that if it was adopted, it would be possible to deal with the more serious offences by means of a change of venue?

Yes, it would.

4165. In which case there would be a reasonable prospect of getting a jury to do its duty?

I think so.

4166. Therefore, between the two suggestions the whole ground is covered?

I think it is, probably.

The Witness is directed to withdraw.

MR. JUSTICE FITZGERALD, is called in; and Examined, as follows:

4167. *Chairman.*] I BELIEVE you are one of the Judges of the Court of Queen's Bench in Ireland?

Yes.

4168. May I ask how long you have held that position?

Twenty-one years and a half.

4169. I observe that you were called as a witness before the House of Commons Committee in 1873?

Yes.

4170. And you then expressed your opinion that there was undoubtedly a strong necessity for an alteration of the law, somewhat in the direction of that which was made in 1871?

Somewhat in that direction.

4171. You were then inclined to admit that an alteration of the law was desirable; I think you were not entirely satisfied with the particular alteration which was made?

It was entirely too violent an alteration. An alteration was called for. There was quite an unanimity in calling for some alteration of the jury law at the time, and I may add, the Act of 1871 (that is the one popularly known as Lord O'Hagan's Act) was passed without opposition in both Houses, and, as I understood, with general approval; it was not until its operation was seen that discontent arose.

4172. You would not propose now, I take it, to do what some of the witnesses have called going behind the Act of 1871, in the sense of doing away with rating qualification, or placing an absolute power of selection in the hands of any public officer?

I think I expressed my opinion before, and I adhere to it still, that it was a mistake to take away the responsibility of the public officer. You might have guarded his power of selection, so as to prevent its abuse; but if you ask my present opinion, I think it is impossible to fall back now and restore the old mode of absolute selection by the sheriff.

4173. Are

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4173. Are you of opinion that the Acts which were passed in 1873 and 1876 were sufficient to remove the imperfections which you adverted to in Lord O'Hagan's Act?

Very largely; and things would have gone on improving, if it were not for the existence of exceptional circumstances. The juries had very much improved (I mean in ordinary cases), and it would be difficult now to impose a higher degree of qualification consistently with having the number of jurors you require; otherwise there would be no objection to increasing the qualification, and getting as high and independent and intelligent a class as you could. It is very important to effect that.

4174. That I presume would vary very much in different parts of Ireland, would it not?

Yes. I can illustrate it now by what occurred at the last Spring Assizes in the county of Clare, and recently at Fermanagh on the north-west circuit. I have in my hand the Clare panel for the Spring Assizes of 1881, and I observe that the last 13 names on the list are from the letter "M," indicating that all the letters had been exhausted save the letter "M." The result of that would have been that until you had exhausted the whole of the letter "M," the jurors would be selected entirely from that letter. One may ask what does that matter. It does matter; the letter M. represents a class. The same thing occurred at Fermanagh last autumn. The sub-sheriff asked me what he was to do. He had come down in the same way to the letter "M," exhausted everything but the letter "M;" and said that under the statute he would be obliged to select his future jurors from that letter; and I told him that he should do so according to the statute law, so that in those counties at least, and probably in many others, if you increase the qualification, you would not have an adequate supply of jurors.

4175. Should you be inclined to say that in those counties where the number on the jury list was larger than the actual requirements, it might be desirable to raise the qualification to a point which would leave on the jury list a sufficient number of jurors, and no more?

That is done in principle under the Jury Act. I mean that you have a variation between different counties under the jury laws as it at present exists. There is a higher standard for some counties than for others. The lesser standard is given where you would not procure a sufficient supply of jurors without it, and I think that is objectionable. I prefer one standard law for the whole country, if you can hit upon it. Antrim would be one of those counties in which I believe the jurors' book is a very large one, the number amounting to some thousands.

4176. That difficulty to which you have referred in connection with the alphabetical rotation could be got over, could it not, by dividing the jury list into blocks, each block containing a certain number of names, then taking the names seriatim from each block until all were exhausted simultaneously?

To a certain extent you would meet it by that; but I would prefer meeting it in another way; that is by taking the jurors from the jurors' book by ballot; the high sheriff and some one else might do it in open court. I would entrust that duty to the high sheriff, and he should do it in open court in the presence of some of the great officers of the county, say, the clerk of the peace and some others. There is no practical difficulty in that; and in my judgment it would be better than the present alphabetical mode of selection; you would exhaust the whole jury book in the end in the same way as you do now. In the jurors' book each juror's name and residence is given, and is marked with a number, and there would be no difficulty in putting numbers in a ballot box representing the whole jurors' book, and letting the sheriff, when he has to select a jury panel, take them from the gross total by ballot. Of course those selected would not be returned into the ballot box again; and in that way you would exhaust the whole. I think that would be a better mode of selection than the present alphabetical one.

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4177. Can you state to the Committee from what class in life the common jurors appear to be generally drawn?

Yes, but I could have done it more satisfactorily if I had anticipated such a question. The better way would have been to have brought the panels; I could have brought with me the panels for half the counties in Ireland, as they have been under my notice. I have the panel of Clare for the last spring assizes; I was one of the presiding judges then. If the Committee wish I will hand it in; the panel represents 146 names. I have looked through it, and about 100 of the 146 names are names of farmers. I cannot under the new jury system speak of Connaught; I have not been there for several years; I have not been on the north-east circuit for five or six years. I can speak of Leinster, Munster, and the north-west; and the general mass of county jurors would be represented by the appellation "farmer."

4178. Is it the case within your observation that there is a considerable disposition on the part of the higher class jurors to absent themselves?

There is not alone that disposition; but it is to a certain extent promoted under the existing law by the uselessness of their attendance. For instance, the challenge enables the parties, either the defendant in a civil action, or the accused in a prosecution, to get rid of all the gentlemen of rank that would, in ordinary circumstances, appear on the jury. It would be very rarely that six gentlemen, magistrates, of position in the county, would appear; and the challenge of six enables the parties to dispense with their attendance, if they do appear.

4179. Lord *Monck.*] Did I understand you to say that that is the case in a civil action?

Yes.

4180. Does the right of challenge exist in a civil action?

Yes, in a civil action as well as a criminal prosecution. Therefore being commonly challenged both in criminal cases and in civil actions, they consider it somewhat useless to attend. There is also an indisposition to attend; and I think there has also been a want of firmness upon the part of the judges in exercising the powers they have to compel their attendance.

4181. *Chairman.*] Taking those two points separately, should you be in favour of a considerable reduction of the right of challenge?

I mentioned the matter before the Committee of the House of Commons in 1873, and probably the challenge given in civil cases is the result of a suggestion of mine. I then struck out a plan which I thought ought to be adopted, that is, I would have abolished peremptory challenges in all cases save capital cases; those I would have left untouched; the peremptory challenge of 20, which was originally given *in favorem vitæ*, and I would have left that as it was in capital cases. I would have abolished it in every other case, substituting a right of peremptory challenge of a limited character; I think I mentioned at the time, three or five; six was the number subsequently adopted; but they departed from my suggestion in this respect, that they left the peremptory challenge of 20 in all cases of felony. It is utterly unnecessary, save in capital felonies. My impression is that the six were too many; however, as it is the existing law it is better to leave it unchanged, that is, leave it at six; but I should certainly be for abolishing the peremptory challenge in felonies not capital.

4182. Would you put it on the same level as misdemeanour?

I would put them all on the same level. You will find in many instances what are called misdemeanours (it is a technical term) are more important, and subject to heavier penalties than many felonies. Felonies were formerly all capital; that is the reason of the challenge.

4183. Then with regard to the fines, the amount of the fine rests with the judge, does it not?

It is in his judicial discretion; and when he imposes a fine it is recorded in the Crown book, and if he does not, before he quits the assize town, take off the fine, then a notice is given to the fined juror, and he has a right of appeal to the next-going judge

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judge of assize; then he makes his case not upon affidavit, but upon a declaration having the same force under the statute. The judge investigates the case, and if he thinks fit, he remits the fine. Sometimes the excuse is non-service, sometimes illness, sometimes absence from the country. I never myself remit a fine unless a good case is made. I think we should be much more determined in having the jurors called in every case on fines, and levying fines upon those who do not attend.

4184. Lord *Monck.*] You think that there is a laxity in that respect?

A considerable laxity. If otherwise the judge gets a sufficient supply of jurors, there is great laxity in it.

4185. *Chairman.*] In such cases we have been told that it is very often usual for no fine to be insisted upon?

That is so most frequently. I do not think the judge requires any additional power; he has only to exercise the power which he has.

4186. Passing from the composition of the jury to the conduct of the jurors, are you able to make any statement to the Committee of the manner in which the juries have discharged their duties within your recent experience?

My most recent experience has been upon the north-west circuit. That comprises six counties, Longford, Cavan, Fermanagh, Tyrone, Donegal, and Londonderry. The criminal business throughout the circuit was very light indeed. In Tyrone I got a pair of white gloves; there being in that large county no criminal case to go before the grand jury. It is a very large district, 60 miles by about 50, in the centre of Ulster. In all the cases that came before me on the last circuit, with possibly one exception, the jurors did their duty very well indeed, both in civil and criminal cases. I do not know that I have, save in one case, any fault to find with them; and that was one of those party cases which can never be cured. It was a case in which a row arose between the Orangemen and the Roman Catholics. A Roman Catholic head was broken, and an Orange jury would not convict. That, however, you will have until the end of time.

4187. That is your most recent experience, is it?

That is my most recent experience. I was the judge who presided at the last winter assizes at Cork in December 1880, and that winter assize embraces four large counties, Clare, Limerick, Kerry, and Cork, as well as the two cities of Limerick and Cork. The trials took place before the juries of the city of Cork. They are, generally speaking, jurors remarkable for their intelligence, and for their reliability, but at the winter assizes they failed, and failed to an extent that surprised me. The business at that winter assize was divisible into two classes. We had a difficult case of murder, cattle stealing, rapes, and other ordinary business; we had, in addition, exceptional cases,—agrarian cases. In every case that was not agrarian the juries did their duty in a manner that you could not take exception to; but when they passed from the ordinary cases to the exceptional ones, then there was a great failure of justice, and disagreement or acquittals where there ought to have been convictions.

4188. You found the conduct of the juries satisfactory in cases of ordinary crime, but very much the reverse in crimes of a particular description?

Yes; what are popularly and commonly called cases of an agrarian character. In any crime connected with the land, we found it impossible to get them to do their duty, though the evidence was perfectly clear. I will illustrate that by one case. I do not profess to give any names, but a party of men were tried for an agrarian offence. The evidence was exceedingly clear; there was no real question, no open for doubt, and I so told the jury. In a criminal case you must submit the case to the jury, you cannot direct as you may in a civil case. Accordingly, I submitted it to the jury, with proper instructions. In about an hour they returned into court, and told me that they disagreed. I asked them if I could give them any assistance by reading my notes, or otherwise recapitulating what the case was; and the foreman blurted out that they were eleven to one. I rather reproved him for that. We do not desire to know what the division of the jury is. They retired again. I, in my innocence, thought it

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was 11 for a conviction and one for acquittal, but they came in again at the end of a couple of hours more, and told me that agreement was hopeless. I, therefore, adopted the course of discharging them. Then I for the first time learnt that the 11 were for acquittal, and the one for conviction. I mention the case because of what occurred on the following morning. On the following morning one of them complained to me that he had been marked out by some of his fellow jurors, and had been threatened in coming into court that day in consequence of his having been the one who would not consent on the previous day to an acquittal; in other words, that he had acted upon the evidence and his oath. There were at Cork winter assizes great failures of justice. It certainly did not arise from want of intelligence. You could not anywhere get a more intelligent jury than a Cork city jury. I have looked over the panel, and I find that they were not connected with land. They were shopkeepers, and people of that class; but a good deal may be said for them. It was close upon Christmas; there was a very great deal of terrorism existing; and it was credibly reported and believed that extraordinary external pressure was applied, and threats were held out, and to many of those men, even what is popularly called "Boycotting," which would have been ruin at that time. To Boycott a shopkeeper at Christmas would have deprived him of a large portion of his profits. Every excuse of that kind is to be offered for them; but no doubt at the winter assize there was a very large failure of justice, even in the city of Cork.

4189. Those jurors would be men of a pretty high rating qualification, would they not?

I should say so; some of them at least very high.

4190. Whether their sympathies were with the criminal or not, they would be pretty sure that they would suffer either in purse or person if they found a verdict according to the evidence?

They certainly apprehended that. Then there was another very disagreeable feature, and I think a highly objectionable one. In some of the Crown prosecutions, at the Cork winter assizes, what I may call a compromise took place; that is, in order to prevent acquittals, the public prosecutor agreed, upon getting a plea of guilty, not to press for any punishment. I think that highly objectionable, but that did take place in some cases of a milder description. At the Cork assizes I expressed my opinion in a closing address to the grand jury. I pointed out what had taken place, and I think used some language (which was misinterpreted) in reference to common jurors. It was language, not of menace, but of warning; it has, however, been interpreted into language of menace, and it has been represented that I am hostile to the jury system of the country. It is quite the reverse; I am in favour of upholding and supporting it; but I thought it necessary to use language of warning, and I said that if this sort of thing continued it would be necessary for the authorities to apply some remedy, and a remedy probably ending in a partial suspension of trial by jury. My next experience after the winter assizes was at the spring assizes of 1881, and principally in the counties of Clare and Kerry. The Clare jurors did pretty fairly; I think next to the City of Cork jurors they are the best in Munster; you have frequently a very intelligent class upon the juries there now, and that has been the case since the Act increasing the qualification, and the Juries Procedure Act of 1876. They did pretty fairly. The business was not very large, nor much of it of an agrarian character. I had one very remarkable case, in which a number of men were tried for holding what is called a Land Court; that is for a seditious conspiracy to interfere with the prerogative of the Crown. The result was a disagreement as to the number of the offenders, and the acquittal of two; but the acquittal of the two took place with my entire sanction; the evidence was not very strong against them, and I do not very much blame them for the disagreement either. With that exception, the Clare juries at the last spring assizes (1881) did fairly. At Limerick I was the city judge, so that I had nothing to do with the county Limerick jurors at the spring assizes. My next experience was at the Kerry spring assizes of 1881. Things were very bad indeed

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deed there. The list was something alarming. I have before me a synopsis (*vide* Appendix) of the cases, the number of offences, specially reported, were 443 for seven months. For the seven months of the previous year there were about 63, so that there was an increase of 6½, or very nearly seven times the number. I should mention, with the permission of the Committee, two remarkable cases as illustrating what was going on. One was a prosecution against two persons for retaining forcible possession. The evidence was quite clear. It was a case in which the landlord obtained judgment in ejectment for non-payment of about three years' rent; and after exhausting every effort to effect a compromise, he put the process of the law in force, and a bailiff was put in possession. After a short time, and when the period for redemption had expired, the parties were put back in possession, and their defence was that they were put back by a blackened and armed and disguised party, which is a common excuse; but it turned out that the leader of the blackened party was the son of one of the defendants, and the brother of the other. I pointed out to the jury that even though they might have been excused for being put back forcibly in possession, they were not excused for forcibly detaining, which they had done, and saying that they would never give up possession. To my surprise in that case, after giving proper directions to the jury, without turning round, they acquitted both prisoners, and acquitted them with loud applause in court. I observed myself that the applause came from a particular direction, and that was the place set apart for jurors in waiting; and the applauders were the jurors in waiting. Upon that occasion I addressed very strong remonstrances to them; and those words have equally been interpreted as words of menace, whereas they were words of warning only. I told them that if that kind of thing went on it would lead to a suspension of trial by jury. The next day I had another case, which exhibits one of the most remarkable phases of the condition of the county that is possible. Two men were tried before me for being of a party who appeared at the house of a gentleman in the county at night disguised demanding admission and the surrender of his arms. He was an old gentleman over 80, and of known respectability; he had a little estate of his own, and farmed a part of it. He was the only man in the house; but his two daughters were with him, and one of them opened the door to admit these men, though they violently demanded entrance. I asked her in the course of the case, "Why did you open the door for them?" and she said that word had gone out (I believe this to be thoroughly well founded; it was while the Arms Act was before the House of Commons) that the Land League men were to come for the arms, and if no resistance was offered, they would commit no outrage. Well, no resistance was offered. They got into this house. This was a young lady of respectability and intelligence. I believe that feeling prevailed throughout the whole country, that if you did not resist you would be subject to no outrage beyond the taking of arms. They got into the house, and having got there they took not only the arms, but they happened to chance upon a sum of 70 *l.*, and took that also. This was considered as transgressing the rules of the Land League; and when these parties came up for trial, I observed that there was no challenge; there was no setting aside by the Crown, and the jury was taken without any objection. Subsequently I asked the reason of this, and the information I got was that the Land League (I mean the local Land League) considered that this taking of money was discreditable, and therefore they determined that these men should be convicted, and one of them was convicted by the jury, who, as was represented to me, consisted chiefly of members of the Land League. With reference to the other, the fact of his identity not being satisfactorily proved, I saved him from conviction.

4191. That points to a conclusion which several witnesses have urged before us, that the point of view from which these offences are regarded by the common people in Ireland is entirely different from the point of view from which they regard ordinary offences, such, for instance, as larcenies?

There is no doubt that in that class of case, certainly in Kerry, and I believe also in the county of Cork, with an ordinary jury you have no chance of a conviction. That class of crime now goes unpunished. Whether it proceeds from terrorism,

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terrorism, or from sympathy with crime, or from obedience to the dictates and pressure of a great confederacy, which we all know to exist, whose action is scarcely secret, and is certainly inexorable, I cannot say, but the result is that in cases of that kind you have no convictions.

4192. Whether the evidence is forthcoming, or not, you mean?
Quite irrespective of the evidence; whilst in all other cases they do their duty fairly, and certainly they do not offend for want of intelligence now.

4193. With regard to the matter of intelligence, have you found that the common jurors (putting aside recent occurrences) have shown an improvement in the matter of intelligence?
Decidedly so, since the Act raising the qualification; and there is also the fact that the men who are upon the jury panels have greater experience.

4194. Lord *Monck.*] They have been educated, you mean?
They have been educated. There is a great improvement, and it arises from bringing them in connection with jurors of a higher stamp, and with the bar and the bench.

4195. *Chairman.*] Since how long have you been aware of this failure of justice; do you consider it an entirely recent phenomenon?
No; before Lord O'Hagan's Act you had occasional failures of justice; but I date these great failures of justice since the passing of the Act of 1871.

4196. And the evil has become intensified since the prevalence of the recent agitation, has it not?
I observed it remarkably last winter, and in the present year.

4197. It would appear to follow from what you have stated to the Committee that we must look forward either to a continued miscarriage of justice, or to some steps by which the trial of particular offences might be conducted beyond the reach of influences, such as you have described?
Certainly, if the present state of things is suffered to continue.

4198. The suggestions which have been made to us point in two directions; first, in that of a more frequent resort to the change of venue; secondly, in that of substituting for the existing mode of trial by jury, trial in some other manner?
That is trial without jury.

4199. That is trial without jury. Would you allow me to ask you first as to the change of venue; would you be disposed to agree with the answer given in your presence just now by Mr. Justice Lawson?
I should certainly facilitate the change of venue. There is ample power at present, but it has to be exercised in rather a cumbrous and expensive manner. I would extend it equally to both parties; both to the public prosecutor and the accused. At present each party to a criminal case can move for a change of venue; but only by a very cumbrous proceeding. If the application is made on the part of the public prosecutor, he, as a matter of course, obtains from the Court of Queen's Bench a *certiorari*, and upon that the proceedings are brought up from the local court, and the accused also, if he is in custody. Then there comes a motion on the part of the public prosecutor suggesting that, in the primary venue, a fair and impartial trial could not be had, and moving to change it to some other venue; that must be sustained by satisfactory evidence upon affidavit; and it comes before the court on a debated or opposed motion, and if the evidence is satisfactory, the court makes an order to change the place of trial; and, either at the suggestion of the public prosecutor, or of its own motion, fixes some other place. That is a lengthy proceeding, and cumbrous. In addition, when the proceedings are brought up from the court below, the prisoner is put to plead anew, and it becomes a record of the Court of Queen's Bench; and all future proceedings take place on that court, and that makes it more tedious and expensive. If you come to try that case in the Court of Queen's Bench, no matter where the venue is, you must either try it by a common jury, or by a special jury struck under the old system; because, by a curious omission in the law, you cannot otherwise have a special jury.

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jury. The mistake arose in this way: formerly every special jury was struck on what is now called the old system; that is, reducing the number down to 24. When the law was altered, giving a different mode of arranging special juries, it was not extended to criminal cases in the Court of Queen's Bench; that has been a matter of absolute decision. The question arose in a case connected with property in Tipperary. Mr. Justice Lawson mentioned a criminal case springing from the same origin. The case I refer to was moved into the Court of Queen's Bench. The parties were proceeding to trial with the ordinary special jury. An objection was taken, and it was finally decided that they had not that authority, the law did not give it, and that it must be a special jury struck under the old system; so that if you have a special jury, it must be under the old system; that is exceedingly objectionable now. The defendant may also move to change the venue, and when he comes to move for a *certiorari* he must make a case in the first instance. The defendant must there take the same proceedings as the public prosecutor would, and must move the court for a change of venue. I would substitute for that, and give it equally to both parties, a summary mode of obtaining, by simple application to the court, a change of venue. I would not give to the Attorney General a power to alter the venue on his mere discretion; I think it would look very invidious. The Court of Queen's Bench will give a change of venue in every proper case, and I think it would look exceedingly unconstitutional and invidious if the public prosecutor of his mere discretion were able to change the venue in any and every criminal case.

4200. The arrangement which you propose would save considerable time and expense as compared with the arrangement now in force, would it not?
Yes, and to simplify it in that way is all that is necessary.

4201. It has the additional advantage of giving a sort of reciprocity on both sides, has it not?
Certainly; I should put both on the same footing.

4202. Whereas if you placed it within the power of the Attorney General to remove the trial on his mere *fiat*, that would be of course a privilege of which you could not give a correlative to the other side?
Certainly. Then I should be inclined also, following up that subject at once, to give each party to a criminal case, the public prosecutor and the accused, the right to try it by an ordinary special jury, equally upon demand.

4203. Lord *Monck*.] You mean that you would give it as an absolute right?
Yes, I would give them the same absolute right as that which litigants have in a civil case, so that all that would be necessary would be simply to give notice that they required a special jury.

4204. What would be the amount of costs; as I understand, in a civil case, the plaintiff or defendant does it at the risk of having to pay the costs?
Yes.

4205. The defendant in a criminal suit is not very likely to be a monied man, and the costs would devolve upon the Crown in any case, would they not?
It might be made the rule, if thought fit, that there should be no fees given to special jurors in criminal cases. It is very easy to deal with that or to leave the court to deal with it.

4206. *Chairman*.] I presume that a change of the venue would not be resorted to, except in cases of importance?
I presume that the Attorney General would not, as public prosecutor, call for it, except in a case of importance and necessity.

4207. Therefore there remains a considerable number of cases which you cannot call unimportant cases, but still which would not be of sufficient importance to warrant their removal to a different venue?
Certainly there would be a large number of small cases. The expense of what we call change of venue is very great. Usually, when the public prosecutor

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moves to change the venue, we put upon him the condition that all the expenses of the defendant shall be paid out of the public purse.

4208. With regard to that rather large residue of cases which could not be dealt with in this way, do you feel disposed to make any suggestion to the Committee?

I am unwilling to make suggestions. I am perfectly willing to answer all questions put to me. I have no hesitation in saying that, quite irrespective of the exceptional circumstances of the present time, an increase of the power of summary conviction is very desirable as a part of our permanent law. I allude now to small cases which ought to go to petty sessions and not to quarter sessions. I should have no objection to a very considerable increase in the class of cases going to petty sessions; putting very likely the condition that the number of the bench should consist of a quorum to be fixed, of whom one at least ought to be a resident magistrate. The advantages of a speedy decision of the cause, and (if punishment is awarded) a certain and speedy punishment would be very great. In cases of intimidation, which involve a very large class (I allude specially to those called Boycotting and threatening people for various matters), I should give a summary power. I would give the Attorney General authority to send these cases to be summarily disposed of at petty sessions. There are two objections, it appears to me, to giving jurisdiction to the courts of quarter sessions. The first would be because of the delay. A delay would often occur of two or three months between the commission of the offence and the party being brought to justice; you therefore lose the element of speed. I think speedy justice, as well as certain justice, is essential. Then, again, I am afraid that at quarter sessions it would really come to be a decision of the chairman alone, and I think that would be objectionable. The chairmen are a class of judges now whom the people see administering justice at quarter sessions and under their Civil Bill jurisdiction, and in whom they have a considerable amount of confidence. I think it would place the chairman in an invidious position, and probably create a considerable amount of ill-feeling towards him, and distrust, if he were determining a large class of criminal cases, without the aid of a jury; but I would entirely be in favour (as part of the permanent law) of increasing the power of summary conviction at petty sessions. For instance, I will tell you a class of cases that might well go there, and which do a great deal of mischief, such as sending threatening notices. I have mentioned intimidation generally. Then there are cases of forcible possession. I do not see why, if the judgment of a court of law has awarded and given the possession of land to the proprietor, and it is taken from him by force, a justice at petty sessions would not be competent to deal with that case; not alone to punish the offender, but to award restitution immediately. I only deal now with cases where the title would not be at all in question, and where a court of law had already determined the right.

4209. Would your suggestion involve not only an extension of the legal jurisdiction of the magistrates, but also an invitation to them to deal with cases which they at present send on for trial by jury?

Certainly. I believe this to be the case, though I do not speak of my own knowledge. The magistrates are under the idea at present that if they have a political, agrarian, or sectarian case, they ought to send it on, and not dispose of it. I think it would be much better for them to dispose of it themselves. Mention was made of some intimation being given to them that they should send such cases on for trial; but I have never heard of that before. There was some rule of the Attorney General by which, even at quarter sessions, cases of a political, sectarian, or agrarian character were sent on to the assizes. That is possibly what may have been alluded to.

4210. Lord *Inchiquin.*] You do not think that it is in consequence of unwillingness on the part of the magistrates to decide the cases that they are sent on?

I do not think so; again guarding myself by saying that I do not speak of my own knowledge, and of what has come before me, but from public reports. I have seen recently in printed reports, within the last 12 months, some appearance of

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of shrinking on the part of magistrates from the performance of their duty, showing that they were subject to the same external influences as the humbler classes of people.

4211. *Chairman.*] To come back for one moment to the question of the change of venue, I believe you have a very wide experience of the condition of Ireland; should you be disposed to say that there are many districts to which you would like to see the venue removed in a case where the sympathies of the jurors would probably be much engaged?

I should have thought, previous to the experience of December last, that in the south of Ireland you could not have selected a better place than the city of Cork, where there would have been an intelligent and impartial trial; but you see things have failed there, and that makes me distrust the whole of the south. I could not fix with confidence on any place in the south of Ireland where you could transfer for trial cases of the character alluded to, and feel any degree of certainty that justice would be done. In the north it is different.

4212. Would it not be considered a very violent step to remove a case that had occurred in the county of Cork to an Ulster county?

I consider it so violent and so objectionable that I would prefer to see an exceptional tribunal, and a partial suspension of trial by jury. In most cases an additional objection would be taken that you would be sending a Roman Catholic offender to be tried by a Protestant jury in the north.

4213. And the effect of that upon public confidence would probably be more disturbing than the temporary constitution of a special tribunal?

I should prefer the latter alternative.

4214. Do you consider that the two suggestions which you have made, the one for facilitating the change of venue, and the other for empowering magistrates to deal with cases with which they do not deal at present, cover the whole of the ground?

Certainly not. It would leave a large class of cases untouched, a class too large to send to either petty sessions or quarter sessions, and yet in which you could not depend, under existing circumstances, upon having justice done. I have no hesitation in again repeating, what I said before, that as to this latter class (the large and important cases), if the present state of things is suffered to continue, you can only deal with it by exceptional legislation, and an exceptional tribunal.

4215. That would involve the constitution of a tribunal appointed *pro hac vice*, would it not?

Exactly. I do not mean to say that I recommend any such thing; but if the present state of things continues, or is suffered to continue, you must do something of the kind. Justice is not done. Certain classes of crime, disgraceful to human nature, go unpunished; the maiming of cattle for instance, and which is a shocking crime; the beating of an unfortunate process server, sometimes killing him. It is not an unfrequent thing. There are cases of that kind that you could not dispose of either at petty sessions or at quarter sessions, and they absolutely go unpunished at present.

4216. Lord *Inchiquin.*] And even cases of murder?

Yes, and even cases where homicide is committed. In fact, in reference to all that class of crimes known as agrarian the demoralisation of the jurors in certain parts of the south is so complete (I am speaking only of those in which I have had experience myself), that you cannot depend on justice being done and crime punished.

4217. May I ask you (of course limiting the question to your own experience) whether you can indicate to the Committee what part of Ireland is at present in such a state as to render it idle to anticipate that common juries within that district will find verdicts in accordance with the evidence and their oaths?

I am afraid I cannot mention any district in the south that I have had experience of, of which I could affirm that in agrarian cases justice would be done at present. I am asked, as I understand, can I point out districts that I have

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had experience of in the south of Ireland, in which I could predict that the juries would do their duty in such cases.

4218. That is the object of my question?
I cannot point out any district in regard to those exceptional cases.

4219. When you speak of the south of Ireland, may I ask what you mean?
What we generally mean by the south is what is comprised in the Munster Circuit; Clare, Limerick, Kerry, and Cork, I am quite certain that you could not count upon them in Kerry or in county of Cork. Munster includes, in addition, Waterford and Tipperary. I have had some little experience there, but not to the same extent. I could not affirm that either in the county of Waterford, or in either riding of the county of Tipperary, you would be likely to have justice done in an agrarian case. I was on that circuit the summer assizes of 1880, but we had very little crime there; very little indeed.

4220. I wish to ask you only one more question with reference to the proposal which I think was made by yourself in 1873, that the verdict of a majority of the jury should be accepted instead of the unanimous verdict; are you of the same opinion now?
I am not aware whether I made that suggestion, but if I made it then I am not disposed to adhere to it now. I believe, however, that your Lordship is right.

4221. I believe you limited the suggestion to civil cases?
I certainly would not recommend the taking of the verdict of a majority in any case civil or criminal now. My own impression is very strong that the law should be identical, and that the juries in civil and in criminal cases should be taken as they are now, from the one panel; in fact you have but one panel for the two courts. If you require unanimity in a civil case it should also be so in a criminal case. There ought to be no distinction. But I should be very much inclined to recommend the reduction of the number of jurors both in civil and in criminal cases. There is no magic in the number 12 at all. Even the most accurate antiquarian research will not enable you to tell why it was that 12 were originally selected. We have dropped into it somehow or other. There are various reasons given, but there is no satisfactory foundation known for it.

4222. Lord *Monck.*] Was it not carried so far that a bill could not be found by less than 12 of the grand jury?
Yes, certainly, the number of the grand jury is usually 23, and a majority of 23 must be at least 12. If it is less than 23, 12 must come into court signifying their assent to the bill.

4223. *Chairman.*] Do you suggest the reduction of the number of jurors upon the ground that the diminished number would feel an increased sense of responsibility, and therefore might be expected to do their duty better?
No, not exactly upon that ground; it is upon a lower ground that I go. I think it is highly inconvenient, taking so many as 12 unnecessarily away from their business and pursuits, at present in many counties it is very irksome and very troublesome, especially in the city of Dublin.

4224. Would not the change have this advantage, that it would enable you to raise the qualification in many parts of the country?
That would be one of the objects I would have in view. If you reduce the number to eight, for instance, taking off a third, eight will try a case as well as twelve, I should say better, but I would still require unanimity.

4225. Would that be a change which would be regarded with suspicion in Ireland, do you think?
I think not. It occurs every day before me that a sufficient number of jurors do not answer. Possibly eight or ten answer, and I appeal to the parties; I am speaking now of civil cases. You cannot do it in criminal cases, and can only do it by consent in civil cases. I say to the parties, "Will you consent to try by eight jurors?" and the consent is given, usually as a matter of course, in civil cases. I think

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I think it would be a great improvement to reduce the number by a third, and it would enable you to mould the law better, so as to procure a greater amount of independent intelligence upon the jury, which is, after all, the object to be accomplished.

4226. It has been suggested to us that the duties now performed by the sessional grand jury are really not very important in the public interest, and, by relieving them from those duties, you would liberate a certain number of persons who are now precluded from serving upon the common juries; is that a suggestion that commends itself to your judgment?

That involves a much larger question, namely, whether you will dispense with grand juries altogether as a criminal inquest. I think it is part of another question, and one that has often occupied the public attention, specially, here and elsewhere. I am not prepared to recommend the abolition of grand juries as a criminal inquest, and I do not see why you should abolish it at quarter sessions if you do not do it at the assizes. It is part of a larger question which requires very grave consideration. Upon the whole, my impression would be against it, I mean abolishing the grand jury as part of the criminal tribunal. If the Committee would allow me, I would make some suggestions for the improvement of the mode by which the jurors are procured at present.

4227. The Committee will be obliged for any suggestion which you can make?

Without involving the increase of standard of qualification, I think that there might be a more complete jurors' book, by expurgation and revision of the the jury lists, before the names come upon the jurors' book. I have often had to complain, and so has my brother, Mr. Justice Lawson, very frequently, of the mode in which the jurors' book is at present made up, and the want of care displayed in doing it. It seems to be nobody's special duty to attend to it. You will find upon it the names of men who have been dead for years. I, myself, have made personal orders, striking names off the jurors' book, and yet they are put on again. One instance I had before me, where I fined a gentleman for non-attendance who had been 17 years absent from the country. A great deal might be done in removing these defects; and I would suggest, in order to their being removed, that the lists should in the first instance go before the justices at petty sessions, as the primary tribunal. They are likely to know every man in their district, whether he is resident, whether he is within the qualified age, and every circumstance connected with him, which would either qualify or disqualify him from being upon the jury list. Then I would also be inclined to recommend, so far as it could be done, the increase of what we call the fancy qualifications; that is, qualifications not dependent upon personal rating. At present you cannot (save in some cases provided for by one of the recent Acts of Parliament) appear upon the jury list, unless you are rated by name. I should promote these fancy qualifications, knowing that they would bring upon the list greater intelligence. For instance, I would make the eldest son of every magistrate a juror; I see no objection whatever to that. I would also include every man within the district who was a graduate of a university, though not rated to the relief of the poor, or otherwise appearing upon the rate-book; I would see no objection to putting him on. Then, having regard to the recent military warrant, we may have a great many of another very desirable class, that is, either half-pay officers, or retired officers; and I would put all those upon the list (you could not have a better class of jurors) if they were resident within the district. There are matters of that kind which would be fully within the cognizance of justices of petty sessions, by which you might add, not a large, but a substantial increase to the independent intelligence that would appear upon the jurors' book.

4228. Would you include among those fancy qualifications graduates of the universities?

Yes; you have at least *primâ facie* reason to suppose that a person who has graduated at a university is a person of education and intelligence.

4229. We have had some suggestions in this direction, and I think one of them

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them was, that persons having a certain income should be qualified, whether they were rated or not?

I should see no objection whatever to that. I think it was one of the suggestions I made before. I think you might do a good deal in the way of expurgation of the names of dead men, and men who have left the country or are disqualified. I have suggested that lists, when formed at petty sessions, should be forwarded to the clerk of the peace for revision by the chairman. They go at present directly before the chairman from the returns of the clerks of the union. Then I would suggest that the responsibility of the ministerial conduct of the revision before the chairman should rest with the clerk of the peace; to some extent it does so at present, but I would put it upon him as a positive duty, and, if necessary, let him be remunerated for it. You must have someone there whose duty it will be to see that none but qualified persons are put upon the jurors' book, and that every qualified person, so far as you can ensure it, is put upon the list. You may distribute the duty as you like, but there must be someone responsible for it. I would further suggest this, that every ministerial officer, who takes a part in the formation of the jury lists, or the jurors' book (I confine it to ministerial officer as excluding the chairman), should be liable to a fine for neglect of duty, and that he should be fined, either by the chairman, or a judge, if brought before him, so as to compel him in that way to perform his duty.

4230. Lord *Ardilaun.*] There would be then the rate collectors, the clerk of the peace, the magistrates, and the chairman, amongst whom to distribute the responsibility, would there not?

I would hardly call the magistrates, in that case, ministerial officers. I have confined it to the ministerial officers. The clerk of the union is bound to send certain lists; he acts ministerially simply; if he fails in the performance of that duty, he ought to be punished by a fine.

4231. The collectors are paid per name, as we understand?

It may require, in that sense, some alteration of the present law. My present proposition is, that every ministerial officer connected with the formation of the jurors' book, should be compellable to perform his duty by the imposition of a fine for the neglect of duty. Then again, I think that the ambit of the jurors' book might be enlarged by limiting the present exemptions of those liable to serve as jurors. For instance, I cannot see why civil engineers, who might be upon the jury list, should be exempted. A man comes up whom I very likely know to be a person of great intelligence; he is called as a juror, and he says to the judge, "I object to serve; I am a civil engineer, and I am exempted by statute." Why should he be exempted by statute? Why should an actuary, or why should a notary be exempted?

4232. *Chairman.*] I suppose a change of that kind would not prevent a civil engineer saying to the judge, "I am in charge of a very important work which requires my presence, and, therefore, be good enough to release me"?

The judge may then excuse him, if he thinks fit.

4233. But it would prevent him claiming exemption, simply because he was a civil engineer?

Yes, he claims now the exemption. The annual revision of the jurors' book is a matter of very considerable expense and trouble, and it would be very well worthy of consideration whether, if properly revised, put together, and expurgated, a biennial revision would not be sufficient. That is a mere matter of suggestion. Then, passing from the formation of the jurors' book, we turn to the formation of the panel for the trial of cases. I have already mentioned that I would suggest a selection by ballot by the high sheriff. That should apply both to common and special juries. An observation was made, during the earlier part of the proceedings, as to the desirability of adopting the Scotch system of having a certain proportion, that is a third, special jurors. The Scotch system is, that a third of every panel shall consist of special jurors. Two-thirds are taken from the common panel, and one-third from the special panel, and then they go together.

That

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That would not be necessary with us, because all the special jurors appear on the common jurors' book; and if you take up any of the panels you will find a certain number of special jurors there already. In Scotland it is different; they keep the two lists separate. A special juror does not appear on the common jurors' book at all. With us he does. In Ireland a special juror is liable to serve as a common juror; and very frequently I have had grand jurors serving as common jurors. I have already mentioned the reduction of the number of the jury to eight. I would further suggest, as having a tendency to avoid unnecessary trouble, and also as giving an opening if thought advisable for increasing the qualification, the enlarging of the category of civil cases in which the court, or a judge, may direct the trial to be without a jury. At present the powers of the court, in that respect, are very limited. There is a power to try any civil case without a jury, but it can only be done with the consent of both parties. During an experience now of 21 years and six months upon the bench, I have only been applied to in two cases to try without a jury. A very large number of civil cases would be better tried without a jury; cases that mainly depend upon the construction of a document, or a question of law. I should be very much inclined to enlarge the power of the court in regard to directing the mode of trial, and enable it to direct that certain cases should be tried, if it should think fit, without a jury. There is also another form, which I have seen gone through, which is wholly unnecessary. A civil case comes up as an undefended cause to be tried by a jury; you have to ballot for a jury. The defendant does not appear to resist the cause, notwithstanding that you have to begin according to the law to ballot for a jury; and, having got a jury, the case is disposed of in about five minutes. What is the necessity for a jury there? The judge could dispose of it a great deal better as an undefended cause. That would come within the general scope of civil cases which might be tried without a jury. I have mentioned already the suggestion as to a special jury in all cases, and the alterations as to challenges. I would not do away at all with having in certain cases, if deemed advisable, a trial by special jury summoned according to the old system. That is necessary in exceptional cases. The alteration I would suggest in that would be, that when the special jury was once in that way selected there should be no challenge on either side. Mr. Justice Lawson adverted to it, and I might advert to it in a more pointed manner. At the late trial in Dublin, which was called a State trial, I was one of the Judges presiding. Forty-eight jurors were first selected; that number was reduced to 24, and of the 24, 18 answered; six were either absent or ill, or dead, but only 18 answered. As they stood before the Court, the defendants had the right of challenging peremptorily six out of the 18. The prosecutor had no right of challenge or of setting aside, so that they did not stand upon an equality. The Court of Queen's Bench had decided that according to the true construction of the Jury Act, where a jury is struck under the old system, the defendant still has the right of challenge from the reduced number. From that opinion I myself dissented, and I should suggest that that should be altered. These suggestions, coupled with the others that have been made, will probably enable the Legislature hereafter to consider in a clearer way whether the increase of the standard of qualification may be necessary or not. There has been, the Committee may have observed in recent legislation, rather a tendency to increase the class of cases in which the intervention of a jury is not resorted to. I refer pointedly to the Land Act of 1870. Very large rights are disposed of under that Act and upon controverted facts, and no jury is assembled; and the Land Bill now before the House, if it becomes law, will probably extend that principle still further. There will be a very large class of cases in many of which you may expect controverted questions of fact, yet in none of them, as I understand, will the intervention of a jury be required. The land cases are disposed of at present by the judges alone; and so under the new Bill, if it becomes law, the cases would be disposed of without a jury. Limiting, then, the number of jurors to eight, and remembering the suggestions I have taken the liberty of making, it may be open hereafter to consider whether it will be desirable, and, if desirable, fit to increase the standard of qualification;

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but after all this will leave untouched the great evil pointed at, and which probably led to the assembling of this Committee, namely, that in exceptional cases, and in exceptional districts, and as long as the present state of agitation continues, you cannot have justice done in certain classes of criminal cases. I should add to that, also, certain civil cases; for instance, in the county of Kerry, I should consider it very hopeless in a case between a landlord and tenant, upon any controverted question of fact, to procure a verdict for the landlord, though he might be ever so well entitled to it, and I would put all these cases upon the same foundation.

4234. You suggest all these alterations as palliatives which might be useful under ordinary circumstances, but under the present circumstances you are inclined to say that no mere palliatives would suffice?

They would leave a great evil untouched. We cannot shut our eyes to the fact that there is the pressure and influence of a great confederacy, I will not say secret, but acting openly, and the jurors in consequence of apprehension or from sympathy with or from being members of the Land League (which very frequently they are), will not in certain cases do justice, no matter whether the cases be civil or criminal. They obey the dictates of the League rather than the obligation of their oath.

4235. Lord *Inchiquin.*] I think you said you had an objection to doing away with the common jury at quarter sessions, on the ground that the question would in that case be left to be decided by the chairman alone; if that is your only objection, surely you might add a certain number of magistrates, say local magistrates or stipendiary magistrates, so as to constitue a tribunal that could deal satisfactorily with a certain number of cases?

My observation was made as to some permanent alteration in the law. You are now pointing at exceptional legislation.

4236. I am alluding to the suggestions which were made by Mr. Justice Lawson just now with reference to doing away with the necessity for a jury at quarter sessions and trying certain of these cases, at the discretion of the Attorney General, without a jury at the quarter sessions; as I understand, you object to that upon the ground that the chairman would in most cases have to try the cases alone?

One of my objections was that practically it would come to the decision of the chairman alone, and I believe it is so at quarter sessions at present. Your Lordship has greater experience than I have of that.

4237. It is so; but if the law is to be altered at all, could you not make it the law that a certain number of local magistrates, or stipendiary magistrates, should be present?

You certainly could make that alteration, and that might remove one objection. The second objection was that it would not be sufficiently speedy. The great object to attain is speedy justice. Besides that, I do not venture to suggest anything of exceptional legislation. I mean that I look upon an alteration of that kind as being local and exceptional, and that it is to be applicable only for a period, and in the exceptional districts, and that it is not to be the general law of the land.

4238. You suggest an increase of the summary jurisdiction of magistrates; you would make it part of the law that one or two of the resident magistrates should be on the bench?

I think so. My reason for that is not that they are a superior class, but they are in direct connection with the Government, and it would create a greater amount of responsibility, and enable the easier interference of the authorities, and a more direct interference, if any error should be committed.

4239. This alteration in the law would really only deal with small cases; it would

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would not really affect the great question now, which is how you are to get convictions in serious cases?

No, I mentioned that it would leave those entirely untouched.

4240. I understand that your recommendation practically is that at the present time it would be necessary to appoint some special tribunal to deal with these cases?

No. I made no recommendation. I said broadly, and I repeat it, that if the present state of things is suffered to continue (and I do not see any chance of its being discontinued), exceptional legislation will be necessary, not forming part of the general law of the country, but creating a local and exceptional tribunal, limited in jurisdiction and in duration.

4241. The other suggestion you have made, such as with reference to the change of venue and with reference to the special jury, in your opinion will scarcely deal with the exceptional state of things you have to deal with at present?

I have said that all these suggestions, though they are in my opinion improvements, will still leave untouched the larger exceptional cases in which at present criminals are enabled to defy justice.

4242. I should like to ask you whether you think these failures of justice are in any way owing, or have been owing, to the want of intelligence of juries in any part of the south of Ireland?

When the Act of 1871 first came into operation, they were largely owing to want of intelligence. I think the intelligence of jurors (saving certain cases in Limerick) has since increased very much. I could not say from recent experience that the failures of justice have been at all due to want of intelligence. Limerick ought to be one of the best counties; the jurors there might be as intelligent as in any other county, because, as a member of the National Board of Education, I am able to say that education has progressed there more than in any other county in Ireland, and yet many of the failures of justice in Limerick, even at present, you would say were due to want of intelligence.

4243. May I ask you whether in your experience you have found that there has been, as a rule, sufficient evidence forthcoming upon which, if the juries were inclined to do their duty, they might have arrived at a satisfactory verdict?

Certainly. I would not have said there was a failure of justice otherwise. All the cases I have adverted to were cases in which an honest jury observing their oath and the evidence could come to but one conclusion.

4244. Lord *Tyrone*.] You laid down a system by which the jurors' book should be largely increased just now; was that with a view of mixing the special jurors with the common jurors?

No; my general view was that of increasing the jurors' book by bringing upon it as much of independent intelligence as you could possibly obtain in various directions. At the present moment all the special jurors appear on the common jurors' book; and when you select a panel for the assizes, say of a 100 or so, it is taken indiscriminately from the book, and always includes a number of special jurors; they come in the ordinary way, on the ordinary panel. I have had very frequently an application made to me by a grand juror to be excused from service as a common juror, because he was serving on the grand jury. I merely mention that as an illustration that these parties do appear on the common jurors' list and on the common jury panel.

4245. Would you consider it an advantage to have, as they do in Scotland, a number of special jurors on every common jury as a necessity?

In Scotland, of the 15 jurymen, five must be special jurors.

4246. I mean on the same principle?

I should very much like that if it could be done; but it is subject to this objection, that it would very much range two classes one against the other. You have five men taken from a different standard by selection, and placed with 10 of a different standard by selection; and, at least with us, there would be a great danger of antagonism between the two.

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4247. You heard my question to Mr. Justice Lawson, who seemed to think that it was more or less immaterial whether a man was acquitted or whether there was a disagreement of the jury; that there was an almost equal failure of justice in either case; is that your opinion?

I will not go exactly to that extent; but probably it is a distinction without much difference. I have sometimes known a man, as to whom the jury disagreed, convicted upon a second or third occasion. There have been instances. One very remarkable one was the Montgomery case. He was tried three times; the jury twice disagreed, and he was convicted on the third trial. That is a very rare case; and really the battle is fought out at the first trial. If there is a disagreement then, it is generally followed by another disagreement. I think that is what Mr. Justice Lawson meant as to its being immaterial, whether the jury disagreed or acquitted.

4248. With regard to your proposition about trying these cases at petty sessions, would you increase the number of cases that could be tried there?

Certainly; that is my suggestion.

4249. And give greater powers of punishment?

Yes; but following exactly what Mr. Justice Lawson said, putting at a low standard the amount of punishment. At present, I think, the utmost jurisdiction that in any case can be exercised at petty sessions is, in some cases, six months' imprisonment. I think that is only applicable to cases of larceny over 5 *s.* in value in which a man pleads guilty. I recollect sitting myself upon a committee, which framed that particular amendment of the law; and there was, especially in this country, a very great jealousy upon the part of the country gentlemen in giving to the magistrates exceptional authority. Accordingly it was limited even in that case to where the defendant pleaded guilty, or submitted to the jurisdiction. I should increase the number of cases; and I have mentioned already a large class under the name of intimidation, which include a threat to Boycott, and a threat to do injury. All those cases I would send to petty sessions. I do not mean to say a threat to murder; that becomes too serious to be dealt with at petty sessions.

4250. And cases of assault?

I would enlarge it in cases of assault. For instance, now, if in the course of an assault a policeman is assaulted in the execution of his duty, that is a case which is commonly sent for trial, with the idea that the man who has committed the assault has subjected himself to, and would receive, a heavier sentence than the magistrates could inflict. I should embrace cases of that kind, and let the magistrates deal with them summarily.

4251. The magistrates must send such a case on for trial, must they not?

Yes. Any case that comes under the head of aggravated assault they must send on; they cannot deal with it; or if it is a case of assaulting a constable in the discharge of his duty, they must send that on also. There are also many other accepted cases.

4252. Has it ever struck you that in the present state of Ireland it might be difficult, or dangerous, I might say, to get the ordinary magistrates to act in those cases?

I have no doubt that there would be considerable difficulty. I have mentioned already, not of my own knowledge, but of what I have seen in the public papers, that there has been a shrinking on the part of magistrates from attending and doing their duty, and I have no doubt that that came about from apprehension; and that was one of the reasons why I suggested that if you give the powers of that kind at petty sessions there should be at least one resident magistrate there forming a portion of the bench.

4253. Lord *Monck.*] I understood you to say that you objected to the proposition made by Mr. Justice Lawson to give the summary jurisdiction to the quarter sessions if it was to be made part of the permanent law of the land?

Yes.

4254. You did object to that?

Certainly.

4255. You

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4255. You objected to it, as I understood, first on the ground of delay?
Yes.

4256. And, secondly, on the ground that it would really become the decision of the quarter sessions judge?
Yes.

4257. In giving this enlarged jurisdiction that you propose to the petty sessions, would you accompany it with the right of appeal?
I have not considered the question of appeal.

4258. You are aware that at present wherever the petty sessions justices impose a fine exceeding 1 *l.*, or a period of imprisonment exceeding one month, the defendant has a right of appeal to quarter sessions?
Yes.

4259. Would you restrict that right of appeal?
At present I should be inclined not to give that right of appeal.

4260. Where would you draw the line; would you give no right of appeal to the quarter sessions?
No, I would not say that. It is a proposition I have hardly considered as to the right of appeal.

4261. The reason I put the question to you is this: it seems to me that your plan of giving jurisdiction to petty sessions, if accompanied by the right of appeal, is identical with that of Mr. Justice Lawson; you transfer the trial practically to quarter sessions, because the man is not punished in the mean time?
He is not punished in the mean time, but the proposition is by no means identical.

4262. Therefore the delay occurs, and the judge at quarter sessions is practically the person to decide?
Yes, according to the present system.

4263. You spoke just now of the jealousy of the House of Commons in entrusting great powers to petty sessions; do you think that that would go down?
That is a matter of which I form no opinion as to whether a thing can be passed in that assembly or not.

4264. Quite independently of that, do you think that it would be desirable to confer an absolute power, without appeal, of imposing a considerable sentence?
No, I do not suggest that you should impose a considerable sentence; I say that the limit should be very narrow, and with protection at assize.

4265. The limit now is a 1 *l.* fine, or a month's imprisonment; would you stop there?
No. My present impression would be not to give the appeal so low as that.

4266. Not in any case?
Not in any of the cases that I have mentioned.

4267. I did not understand you to mention any special cases. I understand you to mean that you would add cases to those which the justices can already decide; but that you would give the jurisdiction on pretty much the same footing?
No, I meant to give an immediate summary power.

4268. That they have already. If they inflict a fine of less than 1 *l.*, or commit to prison for less than a month, their decision is final, and there is no appeal from it?
Yes.

4269. I want to know from you if, with the additional jurisdiction that you propose to give them, you would give the same right of appeal that is now given

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in the jurisdiction they possess; or would you increase the amount of fine and the period of imprisonment which they can impose without appeal?

You should either alter the existing law and take away the power of appeal, or put all on the same ground.

4270. I want to find out the point at which you draw the line?

In giving the right of appeal you would lose one of the benefits to be obtained; that is speedy punishment. That is the only objection I would see to the right of appeal.

4271. Lord *Inchiquin.*] Do you see any objection to making the fine 2 *l.* instead of 1 *l.*?

If you were to carry out the alteration which I suggested in reference to petty sessions, you should consider the whole law of the subject, and put it all on one foundation. I would see no objection to increasing the period to two months' imprisonment.

4272. Lord *Monck.*] And would you increase the fine to 2 *l.*?

Yes; but anything of that kind I look upon rather as a matter of detail.

4273. Lord *Emly.*] The petty sessions clerks in England are generally men with some knowledge of law. We know that unfortunately in Ireland it is very different. Do you think it would be quite safe to give to the magistrates at petty sessions, uninstructed by any legal person, the power of inflicting tolerably severe punishment; say two, three, or four months' imprisonment, without any right of appeal?

There certainly would be a very grave objection in that respect. I do not think the petty sessions clerk has very much to do with it. I believe in England he is usually a solicitor; ours are an inferior class, and very badly paid.

4274. Lord *Monck.*] They do not perform the same functions, do they?

No, not at all. In this country the clerk is an officer assisting and guiding the court; with us he is a ministerial officer in a very small way.

4275. Lord *Emly.*] The fact of a court having a legal adviser tends to inspire confidence in it very much more than a court that has not that advantage; is not that so?

You have not in this country the stipendiary magistrate, I believe.

4276. I do not know that the stipendiary magistrates in Ireland are remarkable for their knowledge of the law, are they?

They act under a great responsibility.

4277. The present oath taken by a juror is not very simple, and I think not very intelligible to an uneducated man. Do you think there would be any hope of more effectually touching the consciences of the jurors if you had some simplification of the oath?

I think not, myself.

4278. You do not think that that would make any difference?

No, I have a prejudice in favour of adhering to the old forms. Then they perfectly understand what they are about.

4279. Is that really so?

It includes "and a true verdict find according to the evidence," and that is the real substance.

4280. I think I have been informed by judges that the jurors sometimes draw this distinction, that if they do not find any verdict at all, they do not act contrary to their oaths?

I believe that is so.

4281. On the last circuit in Longford, were there any agrarian offences tried before you?

I do not say anything as to the county of Longford; I was the civil judge in Longford. The calendar was particularly light, but I think the grand jury were rather of opinion that the state of the county was not satisfactory, notwithstanding that.

4282. Lord

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4282. Lord *Monck.*] The calendar does not always afford a fair indication of the state of crime in the country, does it?

No; I depend more upon the carefully prepared returns of the constabulary than on the calendar.

4283. Lord *Emly.*] Except in Ulster, you had very little experience of agrarian cases on the last circuit you went, had you?

On the last circuit I had experience of criminal trials at Cavan, Fermanagh, Tyrone, and Londonderry; I was the criminal judge in three of those counties, and they are three very important counties.

4284. Therefore outside Ulster you really had no personal experience of those cases during your last circuit?

No; possibly I might upon reflection vary an answer I gave to Lord Monck as to the right of appeal. I have just been considering the question in my own mind, and I now say that it would not be safe to give these exceptional powers without the right of appeal; but I would not give it in the small class of cases you have at present propounded, which are punishable by a fine of 1 *l.*, or a month's imprisonment.

4285. Lord *Monck.*] You would not reduce the right of appeal beyond 1 *l.* fine or a month's imprisonment?

Certainly not beyond that; but I would increase it, and make it higher. I think the import of one of my answers was that I was against the right of appeal as interfering with speedy justice. Upon the whole, and upon reflection, I think I was wrong in that; I therefore withdraw that answer. I should be inclined to give the right of appeal, but not to the same extent that it is given at present, and further to limit any exceptional powers so as to prevent any abuse.

4286. That is just what I want to get at; I want to know where you would draw the line; the line is now drawn at a certain point?

I would take the higher standard. I do not care what it is. I think the month and the 1 *l.* much too low.

4287. Would you say two months and 2 *l.*?

That is a matter of detail.

4288. Lord *Inchiquin.*] In point of fact, if you increased the summary jurisdiction, you would limit the right of appeal further than it is limited at present?

That limitation would be rendered necessary.

The Witness is directed to withdraw.

Adjourned.

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APPENDIX.

Appendix A.

PAPER handed in by Mr. *Molloy*.

MEMORANDUM on the Irish Jury Laws.

The Irish jury system may be considered with regard to three periods.

(1.) From its establishment down to the year 1835, when the 3 & 4 William 4, chapter 91, came into operation.

(2.) From 1835 to 1875, when The Juries Act (Ireland) 1871, 34 & 35 Victoria, chapter 65, came into operation.

(3.) From 1873 to the present time.

During the first period statutes were passed from time to time dealing with the jurors' qualification, the making out of the jurors' lists and of jury panels.

With regard to the jurors' qualification. The common law only required the jurors to be "good and lawful men of the body of the county," or in other words, liege subjects of the Crown residing in the county in which the trial was had, and having a freehold. A freehold, however small, was a sufficient property qualification at the common law; but by the 2 Heury 5, chapter 3, English, extended to Ireland by the operation of Poyning's Act, the freehold was required to be of at least forty shillings value in cases of trials for homicide, and in the great bulk of civil cases.

In the year 1725, by the 12 George 1, chapter 4, provision was for the first time made for making out what are called lists of jurors. The 17th section of the statute required the sheriff yearly in every barony to inquire, by the oaths of twelve or more, and make a true return of all the freeholders having freehold lands or tenements of the yearly value of forty shillings or more in each barony, in a list signed, and on oath, to the January sessions of the peace, to be deposited with the clerk of the peace.

As the jurors to be returned by the sheriffs on their panels would be taken from the lists made out under this statute, the effect of it was practically in all cases to raise the freehold qualification to one at least of forty shillings annual value.

Ten years afterwards, in 1735, by the 9 George 2, chapter 3, the qualification was raised as regards civil cases, by increasing the value of the freehold to at least 5 *l.* yearly value; and a new qualification in civil cases created, namely, a leasehold qualification of being possessed of a lease for a term of years, of which ten at least should be unexpired, or a lease for 61 years or more, determinable on one or more life or lives, on which lease a clear profit rent of not less than 15 *l.* yearly should arise.

By the 2nd section of the statute (9 George 2, chapter 3) the making out of the jurors' lists was taken away from the sheriffs and given to the high constables, who were to return the lists on oath at the Michaelmas Quarter Sessions, and twenty days at least before the 29th September, to affix a copy of the lists on the door of every church within their precincts, and also to leave a copy with the officiating minister, to be read out and published by him after Divine Service on Sunday to the congregation attending.

The 2nd section of the 9 George 2, chapter 3, gave power to the quarter sessions to correct the jurors' lists, and required the sheriff to enter the names on the lists alphabetically in a book to be kept for that purpose. This would appear to be the origin of what is called the jurors' book.

Twenty years afterwards, in 1755, a further change was made in the qualification, as regards civil cases, by the 29 George 2, chapter 6, which raised the freehold qualification from 5 *l.*, the previous amount under 9 George 1, chapter 3, to 10 *l.*; and also required that the number of years unexpired in the leasehold qualification under 9 George 2, chapter 3, should be 15 instead of 10 years.

The 29 George 2, chapter 6, was temporary, but it was made perpetual in 1773 by the 13 & 14 George 3, chapter 41, after which no change was made in the qualification until 1833, when the 3 & 4 William 4, chapter 91, was passed.

During the first period the legislation, as regards the jurors' qualification, was remarkable; it made the qualification different in civil and in criminal cases, and it required a higher qualification in civil than in criminal cases.

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It would appear that during the first period the duty of making out the jurors' list was frequently not fulfilled, for the 19 George 2, chapter 10, section 6, passed in 1745, required the judges on their respective circuits, if they should see occasion, to inquire into any neglect or omission on the part of the persons preparing the jurors' lists, and to inflict fines of not less than 20 *l.* nor more than 40 *l.*

It would appear from the 10 Charles 1, section 3, chapter 18, that complaints were frequently made of the mode in which the sheriffs impanelled juries, and the Legislature required that this duty should be discharged under the obligation of an oath.

The 10 Charles 1, section 3, chapter 18, was passed in 1634; it recites that, "For as much as grievous complaints are many times made of the misdemeanours and evil behaviour of under-sheriffs, who oftentimes having to them committed by the high sheriff the whole or part of the exercising and executing of the office of high sheriff, and not taking any corporal oath, as the high sheriff doth, for the executing and discharging of the same office, do therefore dayly most injuriously, through corruption and affection, impanell jurors for the King's Majesty, and betwixt party and party, to the great loss and hindrance of divers his Majesty's loving subjects, for reformation whereof," and enacts a form of oath to be taken by under sheriffs, bailiffs, deputies, or clerks, that they would "truly and indifferently impanell all juries."

In 1745 a remarkable statute was passed, 19 George 2, chapter 10, by which the power of impanelling jurors in civil cases was taken away from the sheriffs for a period of eight years, and entrusted to three of the judges; one from the King's Bench, another from the Common Pleas, and the third a Baron of the Exchequer, who were to meet in the Exchequer Chamber before each circuit, and draw by ballot from the lists of jurors the names of the jurors to be returned on the panels for the trial of civil cases at the ensuing assizes, one half of whom were to be persons having a freehold or leasehold qualification of 50 *l.* or upwards, and the other half having a freehold or leasehold qualification under 50 *l.*

This 19 George 2, chapter 10, was a temporary statute, and its duration was limited to the 25th March 1753, and the end of the then next Session of Parliament.

In 1772, in consequence of the acquittals of offenders during the outbreak of the "Hearts of Steel," referred to by Sir George Cornewall Lewis in his book on "Local Disturbances in Ireland," pp. 34, 35, the 11 & 12 George 3, chapter 5, was passed, by which it was enacted that certain classes of offences committed in the counties of Antrim, Down, Armagh, Londonderry, and Tyrone, might be tried in the county or city of Dublin. This statute was repealed in 1773, by the 13 & 14 George 3, chapter 4.

Towards the close of the first period the number of Bills brought into Parliament for amending the jury laws in each of the three countries was considerable, and resulted in the enactment in 1825 of the 6 George 4, chapter 22, for Scotland, and the 6 George 4, chapter 50, for England, and in 1833 of the 3 & 4 William 4, chapter 91 for Ireland.

The 3 & 4 William 4, chapter 91, although enacted in 1833, did not come into operation till 1835, as the first jurors' book that could be made out under the Act was that for the year 1835.

The 3 & 4 William 4, chapter 91, removed the difference between the qualification in civil and in criminal cases, and made the qualification the same for civil and criminal cases.

The qualification before the 3 & 4 William 4, chapter 91, and after that statute, was as follows:—

Before 3 & 4 William 4, chapter 91.

In criminal cases:

Only one class qualified, namely, freeholders of the value of forty shillings or upwards.

In civil cases:

Two classes qualified,—

(1.) Freeholders of the value of 5 *l.* or upwards.

(2.) Certain leaseholders of the value of 15 *l.* or upwards.

Under 3 & 4 William 4, chapter 91.

The following classes qualified alike in civil and in criminal cases:—

In Counties at large:

(1.) Those having 10 *l.* a year above reprizes in lands or rents held in fee simple, fee tail, or for life.

(2.) Those

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(2.) Those having 15 *l.* a year in lands held by lease originally made for not less than 21 years.

(3.) Resident merchants, freemen, or householders having a house in any town of the yearly value of 20 *l.*

And for counties of cities and towns.

In addition to the foregoing three classes, the following class:

Resident merchants, freemen, or householders, having personal estate of the value of 100 *l.*

The 3 & 4 William 4, chapter 71, made better provision for making out the jurors' lists and jurors' books, but it made no provision for having the latter corrected in case they should not be properly made out.

In 1845, by the 8 & 9 Victoria, chapter 67, power was given to the Court of Queen's Bench, or any judge of the Queen's Bench, to order the jurors' book to be amended in case of certain errors; but this power was defective, as it did not embrace every case in which the book was improperly made out.

Along with the coming into operation of the 3 & 4 William 4, chapter 91, another reform was effected in 1835, by the late Mr. Justice Perrin, who was then Attorney General, by the rules which he issued to the Crown solicitors with regard to the exercise by the Crown of the right to order jurors to stand by in criminal cases. Complaints had been frequently made of this privilege having been abused, Mr. Justice Perrin and the late Sir Michael O'Loghlen, when examined before the Select Committee of the House of Lords in 1839, on the State of Ireland in respect of Crime, were of opinion that the way in which this privilege had been exercised had an injurious effect on the administration of justice.

The rules issued by Mr Justice Perrin when Attorney General were followed by similar ones of Sir Michael O'Loghlen when Attorney General; and full instructions on the subject were given to the Crown solicitors in 1839, by the then Attorney General, the late Sir Mazière Brady, and in 1868 rules were also issued by Mr. Attorney General Warren.

Complaints were made against the jury system under the 3 & 4 William 4, chapter 91. These complaints were somewhat similar to those made against the jury system under the Juries Act (Ireland) 1871. Many of the witnesses examined before the Select Committee of 1839, already referred to, expressed unfavourable opinions of the then jury system under 3 & 4 William 4, chapter 91.

Major George Warburton, Inspector General of Constabulary, stated that he knew several cases where persons were put forward as qualified to be jurors that he knew himself were totally unqualified, and he mentioned a case where seven men had been summoned and brought a distance of 40 miles to serve as jurors, and who stated that they literally were starving, and had no means of providing themselves, and that he found that out of the seven there were four who could not speak English, and the other three were illiterate. Mr. Rowan, Resident Magistrate, stated that he was sorry to say that it (3 & 4 William 4, chapter 91) had put a class of persons on the panel as jurors, many of whom are likely to be Ribandmen. Mr. Faussett, Magistrate and Grand Juror of Sligo, said that for the last four years the jurors were of a lower class, many of them very illiterate, and could not either read or write; that he was aware remarks had been made by the judges and Crown lawyers on acquittals; and that he recollected Mr. Dudgeon, the Crown Solicitor, stating to him that he thought it was useless to go to the expense of having assizes in Sligo, where it appeared that the number of persons committed in the county of Sligo in 1838 was 224, the number indicted 155, and the number convicted 20 only; and when asked to what he attributed the small number of persons convicted in proportion to the number committed and the number indicted, he said that must be a matter of opinion, and he should attribute it probably to the formation of juries, and that he thought was more than probable

Mr. Hatton, Chief Constable of Constabulary, thought the quality of jurors inferior to what it used to be; there had been some acts (of jurors) he considered very partial, which astonished very much the Crown officers and the parties concerned for the Crown, that he dared say it is more difficult now to obtain verdicts of guilty than it was before the change of the jury.

Captain George Despard, Stipendiary Magistrate, mentioned a case at the Athy Assizes, County Kildare, where a man who was indicted for being one of a party who instigated persons to beat people who had served tithe notices, and against whom the bill had been ignored, having been put on the jury to try the people whom he had employed; and he mentioned another case at the Meath Assizes where the foreman of the petty jury was the very man who sent the party to commit the offence.

Captain Vignoles, Stipendiary Magistrate, stated it was very much more difficult to obtain convictions at assizes now than three or four years ago, and that he attributed that to a disinclination on the part of the inferior class of jurors to convict their fellows.

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Mr. J. Tabiteau, Stipendiary Magistrate, said he thought the jurors were an inferior class since the new Act.

Before the Select Committee of the House of Commons in 1852, on Crime and Outrage, Captain Warburton, Resident Magistrate, stated he found great difficulty in getting jurors to do their duty.

Captain G. Fitzmaurice, Stipendiary Magistrate, stated that many of the jurors are a very bad class of men, a good many of them open to the influence of intimidation as well as sympathy, some of them afraid of doing their duty, but the majority sympathise and are partizans, and have an interest in the proceedings that are going on in the country with respect to a reduction of the rent of land.

Before the Select Committee of the House of Commons in 1871, on the state of Westmeath and certain adjoining parts of Meath and King's County, Mr. Seed, Crown Solicitor, was examined, and said that a class of jurors will be found on all the panels of petty jurors in Ireland as now constituted who are wholly unfit to be entrusted with the trial of any prisoner for an agrarian crime: that the formation of the petty jury panel is now entirely at the discretion of the sub-sheriff, and that the state of the petty jury panels in Ireland at this moment is perfectly frightful; it is utterly absurd at present, in my opinion, to expect that justice can be effectually administered if the petty jury panels are not amended.

The Select Committee of the House of Commons in 1852, on Crime and Outrage, in their Report, recommended as to juries:—

(1.) The adoption of a rating qualification.

(2.) That there should be but one panel for both courts, civil and criminal, at the assizes, in addition to any special jury panel that may be summoned; and

(3.) That measures should be adopted to secure strict impartiality in the construction of the jury panel.

The only one of these recommendations carried into effect before the Juries Act, Ireland, 1871, was that as regards one panel for the two courts at the assizes which was carried into effect by the Common Law Procedure (Ireland) Act of 1853, 16 & 17 Victoria, chapter 113, section 109.

As the 3 & 4 William 4, chapter 91, made a lease an essential part of the jurors' qualification in all cases for counties at large, except in the case of resident merchants, and in cities and towns, and as the number of persons holding by lease in counties had greatly diminished since the passing of the 3 & 4 William 4, chapter 91, great inconvenience and difficulty in the administration of justice was experienced in some districts, and the necessity for legislation as regards juries became pressing, and several Bills on the subject were brought into Parliament, of which the following is a list:—

Bill.	When Introduced.	By whom Introduced.
1	26 May 1854 - -	Mr. Whiteside, Mr. Napier, and Lord Naas.
2	14 December 1854 -	Sir John Young and the Solicitor General for Ireland (Mr. W. Keogh).
3	18 December 1854 -	Mr. Whiteside and Mr. Napier.
4	5 February 1856 -	The Attorney General for Ireland (Mr. W. Keogh), the Solicitor for Ireland (Mr. J. D. Fitzgerald), and Mr. Horsman
5	13 April 1858 - -	Mr. J. D. Fitzgerald, Mr. Monsell, and Mr. Bland.
6	14 June 1858 - -	The Attorney General for Ireland (Mr. Whiteside) and Lord Naas.
7	17 February 1859 -	Mr. J. D. Fitzgerald, Mr. Monsell, and Mr. Bland.
8	26 February 1866 -	The Attorney General for Ireland (Mr Lawson), and the Solicitor General for Ireland (Mr. Sullivan).
9	9 March 1868 - -	The Attorney General for Ireland (Mr. Warren) and the Earl of Mayo.

In Chief Justice Whiteside's Bill of May 1854 (No. 1), the qualification for a common juror was a rating of not less than 30 *l.*, and for a special juror a rating of not less than 60 *l.* This Bill was amended in Committee by the addition of a qualification of 20 *l.* freehold for common, and 50 *l.* freehold for special jurors.

His

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His subsequent Bills of December 1854 (No. 3), and of June 1858 (No. 6), adopted the qualifications in his Bill of May 1854 (No. 1), as amended in Committee.

Sir John Young and Mr. Justice Keogh's Bill of 1854 (No, 2), adopted a rating qualification of 20 *l.*, and a freehold or leasehold qualification of 20 *l* for common jurors, and a rating qualification of not less than 60 *l.*, and a freehold one of not less than 50 *l.*, for special jurors.

In Mr. Justice Keogh's Bill of 1856 (No. 4), the qualifications were the same as in his Bill of 1854.

Mr. Justice Fitzgerald's Bill of 1858 (No. 5) was similar to Mr. Justice Keogh's Bill of 1856, except that for special jurors the rating qualification was reduced from 60 *l.* to 50 *l.*

Mr. Justice Fitzgerald's Bill of 1859 (No. 7) was similar to his Bill of 1858.

Mr. Justice Lawson's Bill of 1866 followed the qualifications in Mr. Justice Fitzgerald's Bill, but raised the rating qualification for a common juror to 30 *l.*

In Judge Warren's Bill of 1868 (No. 9), the qualifications for a common juror were similar to those in Mr. Justice Keogh's Bill, viz. 20 *l.* a year, and for special jurors 60 *l.* a year.

The Jurors Act (Ireland), 1871, carried into effect the recommendations of the Select Committee of 1852. (1) with regard to the adoption of a rating qualification, and (2) for securing strict impartiality in the construction of the jury panel.

It also made better provisions for the preparation and revision of the jurors' lists and the making out of the jurors' books.

It empowered the Court of Queen's Bench or any judge of that court, should any defect or error be found in the jurors' books, to order the same to be corrected and amended; this power the Juries (Ireland) Act, 1873, 36 Victoria, chapter 27, section 4, enacted, might be exercised by any judge at any time during the sitting of his court.

It took away from private prosecutors the right to order jurors to stand by.

In 1873 the qualification of jurors fixed by the Juries Act (Ireland), 1871, was raised by the Juries (Ireland) Act, 1873, 36 Victoria, chapter 27.

In 1876, by the Jurors' Qualification (Ireland) Act, 1876 (39 & 40 Victoria, chapter 21), the qualification for a common juror was further increased in respect of lands, &c. &c., not situated within any city, town, or village, while it was reduced in respect of a dwelling-house, office, and curtilage, which latter form the great bulk of the tenements within cities, towns, or villages. This Act of 1876 also added five new clauses, viz.: (1.) Freeholders of 10 *l.* (2.) Leaseholders of 20 *l.* for a term not less originally than 21 years. (3.) Members of a firm or co-partnership. (4.) Directors or managers of any banking, railway, insurance, steamship, shipping, or other company incorporated by charter or Act of Parliament; and, (5.) Members of any board of harbour commissioners or other body entrusted under Act of Parliament with the management of any harbour or docks.

By the Juries Procedure (Ireland) Act, 1876, 39 & 40 Victoria, chapter 78, the panel of jurors is to be called over at the commencement of the sittings of the court, and every juror who shall not attend when so called, shall be ordered by the court to pay a fine of forty shillings at least, or such larger sum as the court shall, under the circumstances, think fit, and the jurors so failing to attend are to be again summoned the next time a jury is required.

This Act of 1876, 39 & 40 Victoria chapter 78, enacted that in civil trials in the superior courts, the parties, plaintiff and defendant, should be respectively entitled to six peremptory challenges, and in the inferior courts to three peremptory challenges, and that in trials for misdemeanours, the person or persons on trial should be entitled to six peremptory challenges; and it also gave a private prosecutor six peremptory challenges.

25 June 1881. *Constantine Molloy.*

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Appendix B.

PAPERS handed in by Mr. *Molloy*.

Table, showing the Number of Convictions and Acquittals in *Ireland* for the Seven Years, 1850—1856, taken from the "Tables showing the Number of Persons Committed or held to Bail for Trial at the Assizes and Quarter Sessions in each County. Presented to Parliament, p. xxii.

Year.	Convicted.	Acquitted.	Total.
1850 - - - -	17,108	14,218	31,326
1851 - - - -	14,377	10,307	24,684
1852 - - - -	10,454	7,224	17,678
1853 - - - -	8,714	6,430	15,144
1854 - - - -	7,051	4,737	11,788
1855 - - - -	5,220	3,792	9,012
1856 - - - -	4,024	3,075	7,099

Comparative Table, showing the Number of Convictions and Acquittals in *Ireland* for Seven Years, with the Rate per Cent. of each on the whole Number of Offences.

Year.	Convicted.	Acquitted.	Total.	Rate per Cent.	
				Convicted.	Acquitted.
1844 - - -	8,042	11,406	19,448	41·35	58 65
1845 - - - -	7,101	9,595	16,696	42·53	57·47
1846 - - - -	8,639	9,853	18,492	46·72	53·28
1847 - - - -	15,233	15,976	31,209	48·81	51·19
1848 - - - -	18,206	20,316	38,522	47·26	52·74
1849 - - - -	21,202	20,787	41,989	50 49	49 5
1850 - - - -	17,108	14,218	31,326	54·61	45·39

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Considered as to the Class of Crime, the following are the Results:—

Class.	Convicted.	Acquitted.
1. Offences against person - - - - - - -	38·31	61·69
2. Offences against property with violence - - -	47·52	52 48
3. Offences against property without violence. - -	61·27	38·73
4. Malicious offences against property - - - -	49·78	50·22
5. Forgery and offences against currency - - -	49·60	50·40
6. Miscellaneous offences - - - - - - -	37·99	62·01

The above is taken from Forsyth's History of Trial by Jury, p. 460, Appendix IV.

Table, showing the Proportions of those Tried who were Convicted or Detained as Insane, and who were Acquitted, for the Years 1865 to 1879. Compiled from the Figures given in the Criminal and Judical Statistics for *Ireland*.

Year.	Proportion of those Tried who were		Year.	Proportion of those Tried who were	
	Convicted or Detained as Insane.	Acquitted.		Convicted or Detained as Insane.	Acquitted.
1865 - - -	73·6	26·4	1873 - - -	70·0	30·0
1866 - - -	71·7	28·3	1874 - - -	69·3	30·7
1867 - - -	76·6	23·4	1875 - - -	71·9	29·0
1868 - - -	75·4	24·6	1876 - - -	67·9	32·2
1869 - - -	74·2	25·8	1877 - - -	72·4	27·6
1870 - - -	77·2	22·8	1878 - - -	72·1	27·9
1871 - - -	71·9	28·1	1879 - - -	68·9	31·1
1872 - - -	72·2	27·8			

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Appendix C.

PAPER handed in by Mr. Justice *Fitzgerald*, and referred to in his Evidence, Q. 4190.

COUNTY OF KERRY.

Synopsis of the Return of Crime, to be presented to the Judge at Spring Assizes, 1881.

I.—Offences specially Reported.

Cases since last Assizes	Number	Cases for a similar Period last Year.	Number.
Sending letters threatening to murder	39	Murder	1
Wounding, stabbing, &c.	4	Sending letters threatening to murder	5
Firing at the person	1	Wounding, stabbing to do bodily harm	6
Concealing birth of infants	1	Manslaughter	3
Abandoning children under two years	1	Concealing birth of infants	1
Endangering property, &c., on railways	3	Rape	1
Assaults and inflicting bodily harm	9	Assaults with intent to ravish or abuse	2
Ditto common	9	Endangering property or life on railways	1
Ditto on peace officers on duty	5	Assaults inflicting bodily harm	7
Ditto on process servers	3	Ditto common	1
Burglary and housebreaking	2	Burglary and housebreaking	1
Robbery	3	Highway robbery	1
Attempts to rob and demanding money by menaces	1	Cattle, horse, and sheep stealing	5
Cattle, horse, and sheep stealing	1	Larceny to value of 5 *l.* in dwelling-houses	1
Other larcenies	2	Other larcenies	1
Embezzlement	1	Arson and other wilful burnings	9
Arson and other wilful burnings	35	Malicious injury to property exceeding 5 *l.*	3
Killing and maiming cattle	13	Other wilful and malicious injuries	6
Malicious injury to property exceeding 5 *l.*	5	Sending letters threatening to burn houses	1
Other wilful and malicious injuries to property	21	Forgery and uttering forged instruments	1
Riot	4	Uttering, &c., counterfeit coin	1
Assembling armed, &c., or wearing badges	1	Affray	1
Unlawfully imposing or tendering oaths	21	Assembling armed or disguised, wearing badges, &c	1
Seizing arms, &c., and levying contributions	51	Posting, writing, sending, &c., threatening letter and notices	1
Attempting to compel any person to quit his house or taking forcible possession.	11	Rescuing cattle, &c., lawfully seized	2
Assaulting dwelling-houses	14	Total	63
Printing, writing, sending, &c., threatening letters, notices, &c.	162		
Rescuing prisoners from lawful custody	2		
Other intimidations	17		
Conspiracy by holding illegal Land Courts, &c.	1		
Total	443		

II.—Minor Offences.

Nature of Offences	Number since last Assizes	Number for corresponding Period last Year.	Increase.	Decrease.
Assaults	1,671	1,522	149	—
Larcenies	201	266	—	65
Intoxication	2,214	2,309	—	95
Vagrancy	40	25	15	—
Total	4,126	4,122	164	160

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Barry, The Right Hon. Mr. Justice. Unexpected convictions obtained by, at Cork, *Bence Jones* 553——His complaints of non attendance of Dublin jurors, *Byrne* 805——Instance of wrong acquittal in a case tried by, at Waterford, *Slacke* 1008——Comments of, in a case of disagreement, *Leahy* 3617-9.

(Analysis of his Evidence.)—Is junior Justice of the Court of Queen's Bench in Ireland, 1324——Was Solicitor-General in 1868; 1379——Is a native of Limerick, 1333, 1335——Attended Munster Circuit from 1848 to 1868; 1376-9——Large opportunities of watching operation of jury laws, 1326.

Approves of principle of changes in 1871, 1876; though possibly made in too violent a manner, 1327——Selection by sheriff worked very well, but was theoretically objectionable, 1327——Impossible therefore to restore it with reference to securing public confidence, *ib.* 1332.

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Barry, The Right Hon. Mr. Justice—continued.

Advantage of calling jurors by ballot, to prevent possibility of packing, 1329.

Alphabetical rotation secures absolute impartiality, from ease of detecting irregularities, 1329——Inconvenient so far as it fails to exclude incompetent jurors, 1331——This point of incompetency overlooked when dealing in Parliament with question of rating qualification, *ib.*——Operation and results of Acts of 1871 vary much in different venues, as stated, 1333——In civil cases generally favourable, *ib.*

Statement that trial by jury in Limerick is a farce; this statement quoted by Lord Lansdowne in the House of Lords, 1333——Explained by witness, 1335, 1347, 1368-74, 1472.

Want of intelligence the main defect of jurors, 1335, 1346, 1472——But this not universal, 1382, 1400, 1427——Incapacity to discriminate evidence in *alibi* cases, &c., 1336, 1470——New jurors awkward at first, but are improving with practice, 1333, 1346.

Sympathy of jurors is not all with crime, but with accused as a friend, 1333, 1475——Acquittals commonest in such cases, 1348——The remedy is a question of education, 1333, 1435.

Canvassing jurors; has heard of it; no doubt it is done, and was done under old system, 1341——No recollection of actual threats to jurors being complained of, 1342——Disagreements commoner than bad verdicts, 1348.

Describes jurisdiction and practice with regard to change of venue, 1349-50.

Verdict by majority; decidedly opposed to, in criminal cases, 1352——In civil cases, more debateable, *ib.*

Power of Crown to order jurors to stand by: inaccurately called a "challenge," 1356——Ought certainly to be maintained, 1356-62, 1491——Largely used at present, 1387——An unpleasant necessity, *ib.* 1389——Its large use has secured better verdicts in West of Ireland, 1387-90.

Prisoners right of challenge: is not prepared to abridge it, while Crown has to use its powers so largely; otherwise it would be an advantage to reduce peremptory challenges to ten, 1363-4, 1366, 1394-7——It sifts out the intelligence of the jury, 1363, 1365.

Would mix up city and county jurors, when balloting for the jury, but not amalgamate the panels, 1402-3, 1412-18.

Would raise qualification consistently with having proper supply of jurors, 1401, 1436, 1447, 1495-7——A man might fairly be called on to serve at least once, if not twice, a year, 1402, 1411——Would vary qualifications according to richness or poorness of a county, 1409-10.

Importance of special qualifications, to bring in more men of intellect and education, 1408, 1516-19——Insufficiency of a property qualification to ensure competent jurors, 1405——Would qualify sons of peers, of knights, of grand jurors, of magistrates, &c., being residents but not householders, 1404.

States experience of juries on Munster Circuit, 1377-8, 1419, 1453——In Clare, 1420-3, 1429-35, 1443-46——In Cork, 1424-5, 1437-42——In Kerry, 1426——In Dublin, 1333, 1350, 1454-5——In Armagh, 1347, 1459-61——In Tyrone, 1463-9——In Londonderry and Down, 1462.

Trial by judges without a jury would irreparably destroy existing confidence, 1449——Prefers offering no further opinion, the question being one of politics, 1355, 1448, 1451.

Describes system of challenging for cause, 1476——No objection to juries of discovery, they are seldom used, 1477-8——Difficulty of leaving the question entirely to judge, 1484-6——Objections to limiting challenges to those for cause, 1489, 1491.

Evidence as to fines: practice and powers of judge, 1508-25——Too much stress put on non-attendance of upper classes, their numbers being so few, 1515——Embarrassment caused to judge by being pressed with excuses: this would be relieved by making fines compulsory, and defining nature of excuse required, 1523-25.

[Second Examination.]—Explains statement as to want of intelligence of Limerick jurors: it was not the only, but the main, cause of failures of justice: states other causes, 1754——Is a strong admirer of the jury system: his evidence confined to its working in ordinary times, 1755-6.

Bateson, Mr. Murder of, *Moore* 3980-1.

Belfast. Recorder's Court, *Bottomley* 1250-2——Duration of assizes, *Bottomley* 1255: *Barry* 1494——Winter assizes, *Bottomley* 1314-7——Riot cases, 1241, 1310——Good experience of magistrates, *Lloyd* 3240.

Successful result of amalgamating town and county panels, *Bottomley* 1257——Proportion of town jurors on common and special juries, 1322-3.

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Belfast—continued.

Excellence of city juries, even during present agitation, *Blake* 206-7, 268——Satisfactory conduct of common jurors generally, *Bottomley* 1198-9, 1240-2——Deterioration of special jurors since 1871; 1160, 1175-7, 1200-2, 1206-13——Their incompetence in mercantile cases explained, 1206; *Barry* 1383.

Bills. Statement of Bills introduced between 1833 and 1871, to remedy defects in the jury system, *App.* A., pp. 472-3.

Blackburn, Lord Chancellor. See *Special Commissions.*

Blake, Henry Arthur. (Analysis of his Evidence.)—Is resident magistrate at Tuam; has given much attention to operation of jury laws in criminal cases, 127-8——Has been a constabulary officer for twenty-two years, and a resident magistrate for five years, 129.

Very difficult to get convictions in political or agrarian cases, but not in those of larceny or robbery, 131-3, 261-3——Ascribes this partly to sympathy, partly to a total absence of moral courage, 134——Difficulty of getting convictions in cases of threatening letters, 263.

Intimidation occurs before the assizes; has known cases, 135——It acts as an effectual deterrent in almost all the South and West of Ireland, 137——And in agrarian cases in ordinary times, 138——Not much practised in common cases of assault, 139——Knows cases of threatening letters being sent to jurors, as well as of actual violence, 285-8.

Would raise qualification, simply to secure a smaller panel, not from any hope of improving character of juries, 140, 279——Their conduct has been much worse since 1876; 142——Ascribes this mainly to largeness of panel; explains reasons, 143-6, 277-8.

General unwillingness of better class jurors to serve, 147, 150, 222——Insufficiency of fines to secure their attendance, 148-9——Advantage of increasing fines in this respect, 175-9, 221——Importance of securing more high-class jurors in criminal cases, 152——Would do this by effectually carrying out law as it stands, and giving each man his proper turn, 172-3——Disbelief in their incurring any serious danger from serving, in comparison with poorer men, 180-1.

Carelessness of officials in making out jury lists: cases known of jurors never being summoned, 154-9, 242-5.

Right of challenge without cause shown is mischievous on both sides: explains why, 161, 229-30——Would abolish juries of discovery, and leave question of eligibility of juror to the judge, 164-5.

Would empower Attorney-General to send case, after two disagreements against evidence, for trial before three judges, 166, 184-91, 252——Prefers this to suspending trial by jury, as too great a wrench on the jury system, 209-10, 219——Believes people would rather have trial by judges than by special juries in such cases, 224-8, 246-51.

Would have judge defer discharging prisoner, in case of wrongful acquittal, and remit the case to Attorney-General for directions, 166, 216-7.

Would have venue changed to North of Ireland in extreme cases, where it is impossible to get a jury, 167-9——Would like to see venue changed to England, 265——Beneficial effect of winter assizes as to change of venue, 266-7.

Complaints made of assault cases being sent to quarter sessions: would give increased jurisdiction to local magistrates, 171.

Distinct deterioration of juries since 1871; 192——Superiority of city over county jurors, 206——Wrong acquittals frequent, but not enough to justify abolition of trial by jury, 231-2.

Want of confidence in old system of selection by sheriff: would certainly not revert to it, 195-201.

Difficulty of getting evidence, from intimidation of witnesses: far-reaching system of terrorism, 201-4——Disinclination of jurors to support the law, 235-7.

Verdicts by majority would be fatal, resulting almost always in acquittals, 239-41.

Defects in preparation of jury lists; the law compelling no order beyond the first letter, 264——Suggestion to have lists made out in sub-inspector's office, 269-72.

Desirable to have such persons as sons of peers, gentlemen, &c., on juries, but doubts if they would make much difference, for the eldest sons usually go away, 274-6.

Blake, Jeremiah C. (Analysis of his Evidence.)—Is Sessional Crown Solicitor for city of Cork; has been so eleven years; has had twenty-five years' practice in county and city of Cork, 2774-5.

Highly approves present jury system, 2776——Makes no suggestion for its improvement, 2803, 2857.

Wholesome

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Report, 1881—*continued.*

Blake, Jeremiah C. (Analysis of his Evidence)—*continued.*

Wholesome admixture of classes on common juries under new system, 2777-84, 2801——These juries have on the whole acted very well; even in some cases arising out of land agitation, 2785-93, 2799——Exceptions made, as to good conduct, in agrarian cases; misconduct in such cases due to present excitement, 2785-9, 2825-6——And would not be cured by any reconstitution of the panel, or change in system of selecting juries, 2849-53.

Alphabetical rotation so far defective, as it leads to several members of the same firm or family being summoned at the same time, 2803-4.

Magistrates; in city of Cork should have unlimited powers of summary jurisdiction, 2805——Not so in country districts, for they are subject to such solicitation, 2805-8, 2858——Local magistrates too exclusively composed of one class; no want of material, but the best material not always used, 2817-22——Would like to wipe away all the local magistracy, and have none but skilled lawyers, 2809-15, 2858-63.

Power of ordering a juror to stand by; has only exercised it once with city jurors, and not half-a-dozen times with county jurors, 2794, 2829-33, 2837-8.

Prisoners' right of challenge rarely exercised, 2794-8——When exercised, usually from fear of religious prejudice, 2828——Twenty challenges are too many; they tend, when exercised, to exclude the intelligent and better class jurors, 2872-3.

Powers of summary jurisdiction too limited in respect of value of article, 2867——Would make it imperative on local magistrates to dispose of petty offences, *ib.* 2869.

Bloss, Sir R Lynch. Assault on his land bailiff, *Dowling* 3142.

Bolton, George. (Analysis of his Evidence.)—Is Crown Solicitor for Tipperary; was Sessional Solicitor from 1852 till 1868; large experience in preparing cases for trial; was examined before House of Commons Committee in 1874; 3838-40.

Cites typical instances, since 1875, of miscarriages of justice, 3840-71, 3919——Indifference of Tipperary jurors to evidence and judge's charge, 3864, 3941——Fixed determination not to carry out the law; except in larceny and robbery cases, which alone are considered disgraceful, 3685, 3872-3——Previous to 1871 they were considered the best class of jurors in Ireland, 3927-34——Since that change they have become worse and worse; and at present are thoroughly demoralized, 3876-80——Great difficulty in getting evidence, even under old system, but when obtainable, juries formerly would convict, 3922-3——Many cases now fall through from intimidation of witnesses, 3924.

Recommends changing venue, and raising very largely the qualification, as the only chance of remedying present state of things, 3883-4——Would give Attorney General unlimited power to change the venue on his own *fiat*; the application to Queen's Bench expensive, and a waste of time, 3899-3901——Would raise qualification to something like 100*l.* a year for common jurors, adjusting the standard to the requirements of the county, 3883-90——At present the number of jurors is mischievously large, 3942-3, 3957.

Believes these suggestions would probably lead to tolerably satisfactory results, 3902-3——Considers abolition of trial by jury out of the question, except in most extreme cases; it is the last thing to be resorted to; would first try change of venue, 3883, 3896, 3898.

Recommends strongly increasing very largely the jurisdiction of magistrates, to include all but certain graver crimes, 3904-6——Importance of giving them jurisdiction in cases of re-entry after eviction by legal process, 3904——Recommends, also, increasing the number of resident magistrates, for the purpose of relieving the local magistrates from odium or blame, 3904, 3911——The salaries of resident magistrates should also be raised, 3913——High opinion of local magistrates, 3909, 3914.

In favour of abolishing grand juries at quarter sessions as a waste of jurors, and unnecessary for protection of the accused, 3944-5——Important to retain them at assizes, on account of the possibility of there being constitutional questions between the Crown and the subject to decide, 3945-7.

Would not abolish peremptory challenges altogether, but would reduce them to six in all but capital cases, 3950, 3954——Leaving the rights of the Crown as to ordering jurors to "stand by" as they are, 3952——These rights being never abused, and thoroughly understood, 3953-7.

Recommends limiting exemptions for age to seventy instead of sixty-five, 3959.

Bottomley, Henry Haigh. (Analysis of his Evidence.)—Sub-sheriff for the last twenty-three years for County Antrim, 1153-4——Has the duty of preparing the panel from the jurors' book, 1156——Was examined before the Committee of the House of Commons in 1873; his evidence on that occasion referred to, 1159, 1178.

Experience that the Act of 1871 has worked, on the whole, satisfactorily, 1157, 1303——Its provision requiring better class jurors to serve on common juries is disliked,

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Report, 1881—*continued.*

Bottomley Henry Haigh. (Analysis of his Evidence)—*continued.*

1194, 1203, 1304——Advantage of greater strictness in imposition of fines to prevent them from escaping service, 1305-6.

Common jurors much deteriorated in intelligence for some time, 1160——Improved since qualification was raised, 1161——They do their duty well, as regards their oaths, in all classes of cases, 1198-9, 1239-40, 1266-7, 1282-3.

Jury lists full of errors; not enough care taken by clerks of the union and poor rate collectors in preparing and collecting them, 1165——More stringent means required to make them do their duty, 1166——Would deduct from pay for mistakes, 1321——Annual revision quite enough if strictly dealt with, 1258.

Alphabetical system of selection works satisfactorily on the whole, and should be retained, 1167, 1244——But objects to restricting sheriff to taking the first letter of a series; this leaves a residue of jurors who are never called on to serve, 1167-70——Would give sheriff in common jury cases only, and in preparing the panel, a power of rejection for sufficient reason, such reason to be given on a separate schedule, and, if necessary, on oath. 1244, 1271-3, 1178 88, 1223-6, 1271-9, 1299-1301——No doubt this power of rejection would make sheriffs unpopular, but they are most likely to know unfit jurors, 1184, 1243, 1300-1——Better still, perhaps, to give discretionary power to judge, 1259-64.

Fines for non-attendance under Act of 1876 not very strictly enforced, 1173——The fine of 40 *s.* quite high enough, as there is no unwillingness of jurors from capricious or improper motives to attend, 1174——Attendance of higher-class jurors very good, 1204.

Rating qualification should be raised, to secure more intelligence and independence on the juries, 1191-2, 1214.

Special jurors much deteriorated since abolition of selection, 1175-7, 1206-13——Not intelligent enough at Belfast for their duties, which are often heavy, complicated, and technical. 1200-2——Would abolish present qualification and revert to old system, 1214, 1217-8, 1221-3.

States complaints of over-service among jurors; as a remedy, would tell off a certain number of jurors for service out of the large panel on particular days, and excuse others for the time, 1250-6.

Disapproves mixing special jurors with common jurors; believes it would not give better verdicts, but would tend to set class against class, and lead to disagreements, 1268-70.

Is satisfied, on the whole, with the jury system in Antrim; would not propose much change there, 1303——Ascribes bad verdicts, where given, to perversity rather than want of intelligence, 1307.

Hardships of attendance in case of distant jurors; suggests payment of expenses, on some strict scale, to county jurors coming long distances, 1321.

"*Boycotting.*" Case of witness being "Boycotted"; impossibility of getting evidence to prosecute, *Bence Jones* 508——Prosecutions for, under "Conspiracy against Property Act, 1875," *Molloy* 654, 717; *Slacke*, 1026-7——Case of, with a Dublin merchant, *Whitney* 2641-6——Trial for; jury charged to acquit, *Corcoran* 3513——Threatened by the town bellman in the Maryborough case, *Molloy* 717.

Fear of, among jurors, *Byrne* 781-2; *Slacke* 992-4——Especially among shopkeepers, *Morphy* 2047——Liability of Cork jurors to, as tradesmen, *Hamilton* 3283; *Fitzgerald* 4188——Conviction for "Boycotting" a shopkeeper at Cork, *Blake* 2786-7, 2823-4——The system has extended to threatening attorneys, *Gibson* 2287——Practically there is no protection at present against, for jurors, 2339——Uselessness of going to a jury for convictions, 2292; *Slacke* 1026-7——It is the most dangerous weapon against the law, and as such relied on by the Land League, *Hamilton* 3329-31.

Power of local magistrates to give six months, *Boyd* 2457——Subject to prisoner's right to have the case tried at quarter sessions, *Slacke* 1026-7; *Morphy* 2117——Recommends giving local magistrates absolute power of summary conviction; this would stop "Boycotting" in a fortnight, *ib.*——Would give Attorney General authority to send these cases to be summarily disposed of at petty sessions, *Fitzgerald* 4208——Would give summary powers to two resident magistrates, *Hamill* 1801-6, 1882-4——Would empower quarter sessions magistrates, without a jury, to give twelve months; this would be quite enough for bad cases, *Lawson* 4070.

See also *Land League.*

Brady, Sir Maziere. Instructions of, when Attorney General, as to exercise of right of challenge by Crown, *App.* A. p. 471.

Boyd, Thomas. (Analysis of his Evidence.)—Is Sessional Crown Solicitor for Tipperary, having held the office twelve years; large experience of composition and conduct of juries, but only in criminal cases, 2425-7.

General

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Report, 1881—*continued.*

Boyd, Thomas. (Analysis of his Evidence)—*continued.*

General unwillingness of jurors at quarter sessions to convict in cases of assault, forcible possession, and rescue, but not in larceny cases; this evil much increased since 1871; 2428-34——Their misconduct attributable to sympathy with crime and the criminal rather than to fear, 2435-8——The lower jurors are intelligent enough, but they seem not to wish to understand difference between evidence and statement, 2439-40.

Experience that the powers of Crown to order jurors to stand by are seldom exercised; considers them invidious, and of little practical advantage, 2450——Prisoner's right of challenge rarely used; no cases seen of twenty jurors being challenged, 2452——Reluctance of witnesses to give evidence, owing mainly to fear and sympathy, 2490-1.

Would increase summary powers of local magistrates, to include cases of rescue, riot, forcible possession, and other minor offences, 2458-61, 2510-11——Would also increase their power of punishment up to six months' imprisonment for aggravated cases, subject to appeal, 2462-3, 2512-4——States practice as regards appeals from petty sessions, 2464-8——Experience that appeals are not frequent, and sometimes result in heavier sentences; would leave system unchanged, 2453, 2463, 2479, 2506-9.

Would empower Attorney General to send cases, especially agrarian ones, for trial at quarter sessions by county court judge and brother magistrates, 2469-71, 2484-5——Prefers this to trial by special commission, 2488.

Recommends raising the qualification; half the present number of jurors would be enough, 2515——Would have special qualifications for sons of clergymen, farmers, doctors, &c., 2518——And exempt no intelligent and respectable jurors, except clergymen, lawyers, and judges, 2519——Would entrust final revision of jury lists to magistrates at petty sessions, with power to exclude at discretion persons like habitual drunkards and those twice convicted for assault, 2520-6.

Objects to present form of jurors' oath as antiquated and not understood; would define "evidence" to mean "evidence as solely defined by the judge," 2527-32——Would bind common jurors, like special jurors, to secresy, 2532-3——Would ballot surplus of grand jury panel, after twenty-three are chosen, for service on common juries; prefers this to abolishing grand juries altogether at quarter sessions, 2535-9——Would enable juries to find verdicts of "not proven," 2540-1.

Boyd, Mr., Murder of. Intimidation of jurors in the case, *Slacke* 997; *Barry* 1342——Affidavit as to Land League jurors, 1337——The case referred to in connection with change of venue, *Slacke* 1062-7, 1013; *Barry* 1349; *De Moleyns* 1641; *Hamill* 1790, 1793; *Corcoran* 3524——And exercise of right of challenge by the Crown, *Hamilton* 3292, 3319——Impression that the verdict of acquittal was correct, *Morris* 3712.

Buchanan, Lewis Mansergh. (Analysis of his Evidence.)—Is Clerk of the Peace for Tyrone since 1875; was appointed deputy in 1861, but during the entire time has discharged the duties both of deputy and principal, 289-90——Acted from 1865 to 1873 as deputy Clerk of the Crown to Mr. Fitzgerald, 291——Has also been baronial constable in Tyrone since 1861, and as such, prepared the barony jury lists, 294-5.

Jurors before 1871 were extremely good; but their numbers were few; the old qualifications having become almost obsolete, 296——It was often necessary to take unqualified jurors from list of highest cess-payers, 297-8——To that extent the old system was a makeshift, 299.

Qualifications under Act of 1871 lower than was necessary, and brought in a superfluity of incompetent jurors, 300——In other respects the change of qualification was a necessity, 301——The 40*l.* qualification in 1876 excluded the incompetent jurors almost entirely, 305-6——Has generally a high opinion of the working of the new system; the juries are now extremely efficient, 308-10, 317-8, 350——Ascribes this good result partly to the judges, 312.

Old system of selection objected to as open to suspicion; it was bad in principle, though the sheriffs did their duties fairly, 312-6, 354-5.

A further raising of qualification would seriously limit the supply of jurors, and in Tyrone would exclude almost every Catholic juror, 321-2.

No experience of external pressure upon jurors in Tyrone; the county has been very quiet, 323-8.

Alphabetical rotation works fairly as regards administration of justice; but is capable of modification, *e. g.* to prevent members of same firm or family being summoned, 330-1——Would divide lists into pages of twenty-five names each, to remedy such inconveniences, 333——Cites instance of a jury composed wholly of names beginning with M, *ib.* 334.

Special qualifications under Act of 1876 do not exist numerously in Tyrone, 336-8——Jurors qualified thereunder dislike serving, and constantly endeavour to get off, 339.

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Buchanan, Lewis Mansergh. (Analysis of his Evidence)—*continued.*

Attendance of jurors extremely good; the largest number of fines are levied off the upper class jurors, 340–1——Wholesome effect of fines on ordinary class jurors, as to securing attendance, 343–4.

Right of challenge; no experience of its abuse at quarter sessions, 345——The challenge in misdemeanour cases approved, 346——Thinks twelve peremptory challenges would be sufficient; but hesitates to recommend any fundamental change, 349——If right of prisoner is curtailed, that of Crown should be curtailed also, 379——Abolishing peremptory challenges altogether would increase difficulties of prisoner, 382–6——But challenges for cause alone would be a sufficient protection, 386——In that case, would leave question of cause to judge, 388.

Duties of sheriff at present as to framing panel, 362–6——Absolutely essential that he should have no discretion, 365——Comparative fewness of illiterate jurors, 369.

Jury lists, how prepared in first instance, 370–1——They are very well revised now, 372.

Proportion of Roman Catholic jurors in Tyrone, 373——Their conduct good, 376.

Satisfied with principles of present jury system, 389——Confines his evidence principally to Tyrone, but has a general knowledge of Ulster, 390——Fears that elsewhere any interference with system would increase feelings of injustice, 393.

As to unanimity in jury, would be slow to make fundamental changes; if the principle is modified, would certainly not have less than twelve to convict, 397, 401.

Recommends more general resort to change of venue, 399.

Conditional approval of suggestion to have verdict by ballot, 400, 402–3.

Burglary. Case of wrongful acquittal cited, *Boyd* 2500.

Burkes, The. Murder of Mr. Scanlan by, *Bolton* 3840–6.

Butler, Stephen. Case of, referred to, *Bolton* 3858–62.

Byrne, John. (Analysis of his Evidence.)—Is collector-general of rates for city of Dublin and a large portion of the county; prepared jurors' lists for the city, 729–30.

Exemptions from serving are too numerous to secure a fair trial. 731–2——And have impaired the quality of juries, 789–92——Would exempt none but Peers, Members of Parliament, medical men, and lawyers, 734–5——Objects to exempting persons like architects, engineers, pharmaceutical chemists, &c., 736.

Trial by jury of twelve has not been a satisfactory tribunal for many years, 742——Tendency of juries to disagree, even when evidence is conclusive, 744——Recommends two alternative systems, viz.: (1) trial by one judge and three jurors; the judge having two votes and each juror one, and the verdict being that of the majority: and (2) trial by two judges alone, who must be unanimous to fix the verdict, 753——Would empower Lord Lieutenant in Council to bring one of these systems in force when a district is proclaimed, 787——Prefers the second system of the two, 788.

Class of jurors not found to have been much altered by Acts of 1873 and 1876; 754——Importance of getting more upper class jurors; to do this, would reduce number necessary to find a verdict, or, failing that, raise the qualification, 755–62——Fines also should be more strictly enforced, 763–8, 778–81——And the judge should not have unlimited discretion to remit them, 810.

Too many jurors in Dublin are summoned for the trials, 769——Hopeless at present to expect unanimity among Dublin jurors in cases affecting religion or politics, 774——An infusion of better class jurors would not prevent disagreements in face of clear evidence, 773.

Law defective in not fixing upon the judge some responsibility in regard to verdict, 775——Objects to requirement of unanimity; would have a majority of two-thirds carry a verdict, *ib.* 776, 786.

Intimidation of jurors a matter of notoriety, 781——It renders trial by jury a perfect farce, 785.

System of peremptory challenges rather tends to partiality; a man ought not to be the chooser of his own judge, 794.

Approves raising the qualification; would have the same standard for towns and counties, 795–801.

Explains reasons of non-attendance of jurors summoned, 805——Unavoidable errors in jury list caused by changes between date of preparation and expiration of the time of its being used, *ib.*——Suggests plan of continuous self-acting revision, *ib.* 809.

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C.

Canvassing of Jurors. Regular system of canvassing jurors by friends of accused, *Purcell* 41, 65; *Bence Jones* 505; *Boyd* 2430——And the system is well understood, *Dowling* 3167——Took place before present agitation, and is now universal, *Morphy* 2005——Case of, proved at quarter sessions, and trial changed to assizes in consequence, *Huggard* 852——Instances of, noticed in court, *Mitchell*, 1905-7.

Has heard of the practice; no doubt it is done, and was done under old system, *Barry* 1341——Instance of, under old system, *Fitzgerald* 2940——Belief, but no personal knowledge that it exists, *Whitney* 2629-30; *Leahy* 3628.

Practice of obtaining copies of printed panel from sheriff for the purpose, *Purcell* 9, 65; *Morphy* 2022-3——Suggestion to obviate this by not allowing panel to be known till the morning of the sessions or assizes, *Leahy* 3629-30.

No ground for believing it exists in the six counties on the home circuit; nor any knowledge of it existing elsewhere, *Molloy* 686-7——No cases known in Derry or Donegal, *Fitzgerald* 2942.

(Grand Juries.)—Case known of canvassing a petty jury, where men's houses have been visited at night; but no knowledge of tampering with grand juries, *Neligan* 3476——Cases known of canvassing grand juries, *Bence Jones* 505.

(Special Juries.)—Case cited of canvassing a special jury, *Bence Jones* 509, 565-7——Experience that the practice makes better class jurors loth to serve; not wishing to yield to it, they keep away, *Ferguson* 3343.

Capital Cases. See *Challenge of Jurors.*

Carrick-on-Suir. Evidence of resident magistrate at, *Slacke* 986, and *passim.*

Castlebar. Case of forcible possession tried at, *Macdonnell* 3570——Convictions for agrarian offences at assizes, 3604-11.

Certiorari. Cases brought by writ of, to Court of Queen's Bench, *Gibson* 2311-22; *Justice Lawson* 4083-9; *Justice Fitzgerald* 4199.

Challenge of Jurors:

The term "right of challenge" inaccurate as applied to the Crown, *Barry* 1356——See also *Crown.*

1. *Prisoner's Right of Peremptory Challenge, viz.:*
   - (a.) *Generally.*
   - (b.) *In Cases of Felony.*
   - (c.) *In Cases of Misdemeanour.*
   - (d.) *In Civil Cases.*
   - (e.) *With Special Juries struck under Old System.*
2. *Prisoner's Right of Challenge for Cause shown.*

1. *Prisoner's Right of Peremptory Challenge, viz.:*

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The right seldom exercised with city of Cork jurors, *Blake* 2794-8——Or in Tyrone, *Buchanan* 345-7——Rarely at quarter sessions in Kilkenny, but constantly at assizes, *De Moleyns* 1729-31——Its exercise hardly necessary, owing to difficulty of getting juries to agree, *Dowling* 3137.

Importance of the right in certain cases, where objections, however reasonable, may be difficult of actual proof, *Purcell* 79-82, 92-3; *Buchanan* 378-80; *Molloy* 696-7; *Ferguson* 3372——But in such cases, as of suspicion of a grudge, the juror would retire, *Huggard* 862-3——Or any impulse of spite would be overborne by broader feeling of his brother jurors, *Gibson* 2414.

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1. *Prisoner's Right of Peremptory Challenge*—continued.

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Power of prisoners as to clubbing challenges, *Gibson* 2324–31——The practice seldom resorted to, *Whitney* 2585; *Moore* 3981.

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(c.) (*In Cases of Misdemeanour.*) Prisoner's right of six challenges (under Act of 1876) approved, *Buchanan* 346; *Hamill* 1892–4——Complaint of its helping to exclude the best jurors; but it may be left as it is, *Ferguson* 3340–2, 3349——Approved in principle since the distinction between misdemeanour and felony is almost broken down, and the right, if left in one case, should be left in the other, *Morris* 3693.

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(d.) (*In Civil Cases.*) Prisoner's right of six challenges (under Act of 1876) a most salutary reform, *Molloy* 637, 692; *Gibson* 2355——Operates to exclude respectable jurors, *Justice Fitzgerald* 4178–80.

(e.) (*With Special Juries struck under Old System.*) Right of prisoner, but not of Crown, to six challenges out of reduced panel of twenty-four jurors: interpretation by Court of

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CHALLENGE OF JURORS—continued.

1. *Prisoner's Right of Peremptory Challenge*—continued.

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Disappointed

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Edmondson, Thomas. (Analysis of his Evidence.)—Is Honorary Secretary of the Dublin Jurors' Association; states objects and character of Association, 404–7——Speaks in the name of the Association, *passim.*

Evidence as to jurors with special qualifications under Act of 1876; 411–4——Is satisfied with system of alphabetical rotation, 415–8——Would have members of public companies placed on the special, instead of the common panel, 419——Recommends quarterly revision of jury lists, to rectify errors from death or removal during the year, *ib.*

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Approves suggestion of Collector General as to issue of a preliminary summons, to enable names to be added to panel, if required, 442——Want of proper powers to compel qualified jurors to give the necessary information, *ib.*

No recollection of any cases of intimidating jurors in Dublin, 446–52——Aversion of better class jurors to serve on common juries, 453–7——Cases known of evading service by self-disfranchisement, 475.

Ejectment. Unsatisfactory conduct of juries in cases arising out of decrees of ejectment, *Macdonnell* 3554——Proposal to make offence of retaking land after a decree of, summarily punishable as contempt of court, *Neligan* 3477.

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Elrington, Faviere, Q. C. (Analysis of his Evidence.)—Is Recorder of Londonderry, 3780——Approves generally of new jury system, assuming a return to selection impossible; it works fairly enough in Derry, 3781-2——But prefers selection to rating, as a test of qualification, 3783——Has no fault to find with Derry jurors, beyond occasional stupidity; but has hardly any experience in criminal cases, 3784-93——Much unnecessary attendance from want of business; need of adjusting summonses in this respect, 3790-2.

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Enniskymon. Assault case at, *Kelly* 3054, 3060.

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Estreat. See *Recognizance.*

Evidence. The term in jurors' oath not understood by jurors; proposal to substitute "evidence as solely defined by the judge," *Boyd* 2527-32.

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Incapacity of poorer class of jurors to weigh evidence, *Neligan* 3413.

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Exclusion of Jurors. See *Rejection of Jurors.*

Exemptions (*of Jurors*). Considered at present too numerous, *Byrne* 731-2, 738-9, 741; *De Moleyns* 1634-6; *Hamill* 1783; *Boyd* 2519; *Fitzgerald* 2982-3; *Kelly* 3066; *Justice Fitzgerald* 4231——Contrary opinion, *Neligan* 3451; *Elrington* 3823.

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Pharmaceutical chemists, *Byrne* 736; *Fitzgerald* 2982.
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Exemptions by "writ and charter" under Act; these very numerous, *Fitzgerald* 2982, 2990-4.

Act exempting jurors every alternate assize, if they live fifteen miles from assize town; this clause virtually inoperative, from ignorance of jurymen summoned, *Harvey* 816.

Non-availability of present exemptions in many cases, owing to precept not having been altered in accordance with the last Act, *Ebrington* 3825-31——Irregularity of clerk of the union in returning persons once exempted, *Bolton* 3972——Large number of exemptions at Waterford, owing to non-enquiry into claims, *Harvey* 822——Need of more investigation by poor-rate collectors, 818.

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Faction Fights. In Limerick, *De Moleyns* 1680-1, 1710-11——Much more prevalent there seven or eight years ago, *Leahy* 3646——Have been resumed lately in certain parts, *Blake* 205——Prevalence of old faction feuds in New Pallas, *Purcell* 9, 54——Organisation in these factions, 65.

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Farmers. Connection of, with Land League in Kerry, *Haggard* 870, 894——In Tipperary, *Slake* 1047——In Limerick, *Barry* 1338-9——In Cork, *Hamilton* 3278——Complaint of small farmers as jurors, from liability to sinister influences, *Blake* 248——Their want of educated intelligence in Limerick, *De Moleyns* 1722-5.

See also *JURIES* (*Composition and Quality*). *Special Juries.*

"*Fancy*" *Qualifications.* See *Special Qualifications.*

Faussett, Mr. His evidence before Committee of 1839 referred to, *App.* A., p. 471.

Felony. Conviction for, a disqualification as juror, *Purcell* 106——Origin of challenges in cases of, *Neligan* 3420; *Molloy* 637. See also *CHALLENGES* (*Felony*).

Fenianism. Notoriously prevalent in Kerry, *Morris* 3681——Trials for, at Cork, *Barry* 1379——At Mullingar, *Dowling* 3135——Case of Fenian assault on soldiers, tried at Dundalk, *Morris* 3686-8—— Cases of violence connected with, fairly tried by Dublin juries, *Barry* 1457.

Ferguson, Robert, Q.C. (Analysis of his Evidence.)—Has been Chairman of West Riding of County Cork since 1872; was previously a practising barrister on Munster Circuit, 3337——Gave evidence before Commons' Committee in 1873; 3338——Speaks with limited experience as to agrarian cases, 3386.

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Ferguson, Robert, Q.C. (Analysis of his Evidence)—*continued.*

Better class jurors habitually challenged; bad result of right of challenge for misdemeanours in this respect, 3340-2——Would retain, however, those six challenges as they are, 3349——Reluctance of better class jurors to serve, owing to intimidation in country districts, and dislike of yielding to canvassing, 3343——Importance of having only a few on juries; their intelligence will lead the rest, 3371-5.

Proposes accordingly to have a certain proportion of special jurors on common juries, and not allow prisoner to challenge them all, 3347——In cases of felony would limit the challenges introduced *in favorem vitæ* to two out of five special jurors, as in Scotland, 3349——Would not abolish peremptory challenges altogether, owing to difficulty in all cases of proving a reasonable cause, 3372.

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Recommends abolishing grand juries, as a useless form, and substituting, for indictments, informations sent up direct to petty jury, 3355.

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Believes raising the qualification would have practically no effect, the chief objection is the difficulty of getting enough qualified jurors, 3388-91.

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Fines (*Non-attendance of Jurors*):

(*Generally*). Doubtful advantage of inflicting heavier fines; the ingenious, who are best qualified to serve, would be sure to evade them, *Harvey* 823——Importance of greater stringency in regard to fines, so as to get better jurors to attend, *Ferguson* 334; *Lawson* 4039; *Justice Fitzgerald* 4184——Ample powers of judges in this respect at present, 4185; *Lawson* 4135; *Byrne,* 763-7, 810.

Practice as to recording fines, *Barry* 1522; *Hamill* 1782; *Fitzgerald* 2966-7; *Justice Fitzgerald* 4183.

Judges dislike fining, as coercion, if they can avoid it, *Fitzgerald* 2974; *Barry* 1508——Opinion that they are too lax in this respect, *Justice Fitzgerald* 4184.

Remission of fines: objection to giving judge unlimited power to remit, *Byrne* 810——Contrary opinion, *Lawson* 4137——Witness never remits unless a good case is made out, *Justice Fitzgerald* 4183——Experience that fines are more improperly remitted, *Huggard* 985——Embarrassment of judge, being pressed by excuses; consequent importance of defining grounds of remission, *Barry* 1523-5——Procedure of judge stated, *Justice Fitzgerald* 4183——Judge has no power to remit when once fine is recorded, and commission is over, *Barry* 1522——Frequency of application to Dublin Jurors' Association for assistance in getting fines remitted, *Edmondson* 459.

Better class jurors; most usually the class fined, *Buchanan* 340——They prefer fines to attendance, *ib.*; *Purcell* 28; *Morphy* 1989, 1992; *Kelly* 3016——Regarding fines as the insurance paid for safety, *Blake* 149—Cases known of their readiness to pay large sums to escape service, *Byrne* 784; *Kelly* 3016——Especially in political trials, *Byrne* 767-8—— Belief, nevertheless, that something might be done, by making fines of a substantial amount, and imposing them with certainty, 763-7, 810; *Blake* 175, 221.

(*Fine on First calling over.*) This fine limited by statute, viz., Act of 1876, to 40*s.*, *Purcell* 29; *Blake* 175, 178; *Molloy* 676; *Bottomley* 1173——Is compulsory, unless a special application is made for remission, *Blake* 177; *Buchanan* 341; *Morphy* 1990, 1997-8——Its compulsory character approved; wholesome effects thereof on ordinary jurors, *Buchanan* 343——Excuses usually considered at next quarter sessions or assizes, *Purcell* 30; *Morphy* 1997.

This fine not very strictly enforced, *Bottomley* 1173; *Molloy* 676; *Byrne* 763, 778-9——Always enforced unless a good excuse is given, *Purcell* 30; *Hamill* 1782; *Fitzgerald* 2919; *Barry* 1508——Rarely any need to impose it, owing to good attendance of jurors, *Fitzgerald* 2918——Its strict enforcement approved, except for valid reasons, *Dowling* 3172-5.

Sufficient to ensure attendance of ordinary jurors, *Purcell* 33; *Blake* 179; *Buchanan* 344. *Bottomley* 1174; *Kelly* 3016: *Neligan* 3423.

Insufficient

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Insufficient in the case of better class jurors, *Purcell* 31; *Blake* 179· *Buchanan* 344 ——Not so sure of this; they usually appear at first calling over, and then go away, *Barry* 1509.

Practice of judge to remit this fine, if a jury can be got on second calling over, *Byrne* 780; *Huggard* 865; *Barry* 1508–14; *Morphy* 1995–6——Or if the juryman turns up after first call, and offers to serve throughout the assize, *Barry* 1508.

This fine objected to, would defer fining till jurors are called to be sworn, leaving the amount then to judge, *Molloy* 676.

Proposal to graduate this fine according to rating qualification of juror, *Neligan* 3423 ——Advantages found from severity in case of better class jurors, *ib.*

(*Fines on Second calling over.*) These fines unlimited, being left to discretion of judge, *Purcell* 32; *Blake* 175–6——No need of giving judge any further powers, *Fitzgerald* 2973; *Lawson* 4135—— Desirable to fine at this stage, *Fitzgerald* 2972——Experience that even ordinary jurors prefer a stiff fine to attendance in agrarian cases, *Kelly* 3080–1.

Practically these fines are never levied, *Morphy* 1994–5——Cases known of a fine of 5*l.*, *Blake* 221——Has known 50*l.* imposed on a Dublin man of business, *Edmondson* 460–2——Has heard of such large fines, but doubts if they were ever enforced, *Molloy* 677——Has never found it necessary to fine more than 5*l.*, *Neligan* 3424——These fines should never be less than 2*l.*, *Ferguson* 3380-4.

Practice of passing by these fines, if there are enough jurors in court, *Fitzgerald* 2968–9, 2974; *Kelly* 3017, 3077——Over laxity of judges in this respect, *Justice Fitzgerald* 4184; *Ferguson* 3380–4; *Lawson* 4039.

Experience that jurors, present at the first call, fail to answer the second, notwithstanding their liability to these fines, *Fitzgerald*, 2970–1; *Kelly* 3017——Experience that if they answer the first call they remain for the second, *Ferguson* 3345–6, 3378–9.

Proposal to supplement these fines by a provision that the trial shall not proceed, unless at least nine-tenths of the panel are present, *Kelly* 3077–81.

Finding of Committee that the system of fines at this stage is open to criticism: recommendation that, in the absence of a reasonable excuse these fines should be strictly enforced, notwithstanding enough jurors are in attendance: and that the amount of the fine, variable at the discretion of the judge, should be made sufficient to deter jurors of the wealthier class from avoiding service, *Rep.* paragraphs 47 and 48.

See also *Attendance of Jurors.*

Fitzgerald, Thomas. (Analysis of his Evidence.)—Is a solicitor practising in Dublin, 2936; and Crown Solicitor for counties of Donegal and Londonderry; has held this office twenty-five years, 2880–1.

Finds little difference in point of convictions and acquittals, between systems before and after 1873; 2882–5——Is generally satisfied with present system as regards change of qualification, and method of selecting jurors, 2886–92.

Experience that new jurors were at first awkward, 2917——But now they do their duty very fairly, 2894. 2914–6——Except in agrarian and riot cases, where local feeling influences them, 2895——Finds much disinclination among gentlemen to serve on common juries, 2905–8——Importance of getting them; their intelligence would have a guiding influence, 2910, 2961–3——Disbelieves in their presence provoking class jealousies, 2963–5——Approves Scotch system of making one-third of common juries consist of special jurors, 2910, 2948–53.

Jurisdiction of local magistrates is ample, and does not require extension, 2920–1 ——States practice in certain cases of accepting a plea of guilty, and discharging on bail; the practice objectionable but often necessary, 2922–35.

Good experience of Dublin jurors; they are too numerous and scattered to be subjected to improper influences, 2936–41.

Finds the prisoner's right of challenge operates to exclude better class jurors in some cases, but not in all, 2959–60——States practice as to calling over panel, 2966–8—— Experience that many jurors answer first call, but shirk the second, 2946–2970—— Would insist on fines for absence when name is hallotted for service, 2971——Over leniency of judges in this respect, 2973–4.

Exemptions at present too numerous, 2982——Would not exempt apothecaries, pharmaceutical chemists, civil engineers, &c. &c., *ib.*——Large number of exemptions by "writ or charter," *ib.*, 2990–4.

Would have special qualification, irrespective of rating, for sons of grand jurors and men who are on the commission of peace in the county, 2983.

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Report, 1881– *continued.*

Fitzgerald, The Right Hon. Justice. Reference to cases tried by, *Huggard* 844-5; *Bolton* 3848, 3853——His strictures on conduct of Cork jurors not concurred in, *Blake* 2840–5.

(Analysis of his Evidence.) Is a judge of the Court of Queen's Bench in Ireland; has held that position for twenty-one years and a half, 4167–8——Was examined before the Commons' Committee in 1873; 4169.

Some alteration of the jury system was called for in 1871; but the alteration made was altogether too violent, 4171——Sheriff's old power of selection cannot now be restored, but it might have been guarded from abuse; it was a mistake to take away the responsibility of the public officer, 4172.

No want of intelligence among jurors generally; improvement found in this respect since the qualification was raised, 4192-4, 4242——Further raising it would probably make it difficult to get enough jurors; otherwise no objection, 4173——Objects to lowering it, as is done in some counties, to obtain sufficient supply; prefers uniformity, 4175.

Alphabetical rotation objectionable, from preponderance of certain letters; would prefer ballot by sheriff in open court, 4174-6——Both for common and special juries, 4283.

Attendance disliked by better class jurors; this feeling is increased by exercise of challenge, which gets rid of those who do attend, 4178——Judges also not firm enough in compelling their attendance, 4180——Too much laxity in fining, if a jury is obtained; the judges have ample powers if they would use them, 4183–5.

Peremptory challenge of twenty should be reduced in all non-capital felonies to six, as in misdemeanours, 4181–2.

States experience of jurors on north-west circuit, and at Cork, Clare, and Kerry assizes, 4186–90——Bad conduct of jurors in agrarian cases; hopeless to expect convictions, 4187–91——Objectionable practice of accepting plea of guilty on condition of not pressing punishment, 4190.

Dates chief failures of justice since Act of 1871; 4195——They are due to exceptional state of things, *i. e.*, Land League terrorism, 4234——If this state of things continues, exceptional legislation will be necessary, involving a special tribunal, 4214, 4240.

Change of venue; should certainly be facilitated, 4199——Present procedure stated, and objected to as cumbrous and expensive, *ib.*——Objects to juries being struck under old system, *ib.*——Would enable venue to be changed, on application of either party, to Court of Queen's Bench; prefers this to giving the power to Attorney General, 4199-4201——Would enable either party to change venue, on demand, as in civil cases, 4202-5——No change of venue from one place to another in Ireland would be of much use now; strong objections, however, to changing it from south to north; would prefer even a partial suspension of trial by jury, as an alternative, to this, 4211-3.

Recommends increasing generally the summary jurisdiction of magistrates; would enlarge powers of petty sessions, with at least one resident magistrate to assist; but objects to doing so with quarter sessions, 4208–9, 4238, 4252, 4248–56.

Civil cases: verdict by majority recommended by witness in 1873, but not now; the law for civil and criminal cases should be identical, 4220–1——Would enlarge category of civil cases triable without a jury, so as to include, at least, all undefended causes, 4133.

Would reduce number of jurors in all cases, 4221——To lessen inconvenience of attendance, 4223——And to enable qualification to be raised, 4224——Eight jurors would be quite enough, *ib.*

Grand juries: impression generally against propriety of abolishing them as a criminal inquest; no reason for abolishing them at quarter sessions, if not at assizes, 4226.

Jury lists: importance of more careful revision, 4227——Proposal to send them in first instance to justices at petty sessions, *ib.*——And to fine all ministerial officers, connected with formation of jurors' book, for neglect of duty, 4230–1——Believes a biennial, instead of annual revision, would be sufficient, provided lists were properly put together, revised, and expurgated, 4233.

Exemptions too numerous at present; objects to exempting civil engineers, actuaries, and notaries, 4231-3.

Special qualifications: would increase number of non-rating qualifications, so as to include eldest sons of magistrates, graduates of universities, half-pay and retired officers, and persons having a certain income, 4227-9.

Scotch system of one-third special jurors on common juries; unnecessary in Ireland, the special and common panels not being separate, as in Scotland, 4233.

Special

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Fitzgerald, The Right Hon. Justice - continued.

Special juries struck under old system: the practice objectionable, 4199——But necessary in exceptional cases, 4233—Would exclude challenge on either side in such cases, *ib.*

Inclined to restrict right of appeal from petty sessions, on the ground of its interfering with speedy punishment, 4257-70——Varies previous answer; would retain right of appeal, if exceptional powers, as proposed, are given to petty sessions, 4284.

Fitzgerald, The Right Hon Baron. Case tried by, at Castlebar, *Macdonnell* 3609-11.

Fitzmaurice, Capt. G. Evidence of, before Committee of 1839 referred to, *App.* A., p. 472.

Forcible Possession. Cases of, referred to, *Slacke* 1008; *De Moleyns* 1612-4; *Corcoran* 3513; *Macdonnell* 3570; *Justice Fitzgerald* 4190——Two classes of such cases, *Hamill* 1891——A common offence now, but not so in ordinary times, *De Moleyns* 1168——General unwillingness of jurors to convict, *Boyd* 2428-31; *Macdonnell* 3548, 3554——Proposals to give summary jurisdiction to magistrates, *Morris* 3668-9; *Bottomley* 3904-6; *Justice Fitzgerald* 4208.

Recommendation of Committee that the magistrates should have power, and be bound to deal with such cases, where question of right has been disposed of, unless otherwise directed by the public prosecutor, *Rep.* paragraphs 68-9.

Forsyth, Mr. His "History of Trial by Jury;" referred to, *Molloy* 722-3.

France. Practice of not allowing trial to go on, unless full panel are present, *Kelly* 3078.

Freeholders. The term not used in Ireland as in England, but includes lessees for lives, *Mitchell* 1951——Rarity of, in Ulster, *Hamilton* 3280.

Freehold Qualification. Origin and early history of, *App.* A., p 469——Changes made by Act of 1833, *ib.* 470——Ten pound qualification under Act of 1876, *ib.* 473——This qualification practically non-existent, *Gibson* 2284.

G.

Galway. Juries in, very good, the town excepted, *Whelan* 1583——Land League rife in, *Hamill* 1813——More so than in any other part of Ireland, *Kelly* 3015——Unwillingness of all classes to serve on juries, 3013-4.

Gibson, John George, Q.C. (Analysis of his Evidence.)— Is in considerable practice at Irish bar, 2272——His personal experience of juries confined to Leinster circuit and Dublin, 2374.

Disapproves of principle introduced by Act of 1871; 2274——The sheriff's old power of selection worked satisfactorily, 2276——The only complaints against it were from those classes who suffered from convictions, 2279——And this feeling was rather fear of conviction than distrust, 2406, 2410——Would decidedly revert to old system if possible, 2281——As the only means to secure intelligence and responsibility, 2403.

The Act of 1876 an advance beyond that of 1871; but recent agitation has destroyed its benefits, and things are now going from bad to worse, 2391-2.

Qualification now too low, 2276——Would raise it as high as possible, say to 60*l.*, subject to question of obtaining sufficient jurors, 2333-8, 2376——Experience that intelligence tends to increase with higher qualification, 2371.

Verdicts of "Not proven" possibly might be an improvement in Ireland; instances cited to that effect, 2421.

Alphabetical system of selection objected to as too mechanical, 2277.

Right of challenge; always exercised by prisoner to exclude respectable minority, 2285, 2291——Abuse of, in case of juries struck under old system, 2308-24——Would abolish challenges in misdemeanour cases, 2323, 2412-6——Twenty challenges too many in cases of felony, 2424-31——Difficult to limit these challenges, but desirable to do so on general grounds, 2417——Power of challenge in civil cases is most beneficial, 2355.

Power of Crown as to ordering to "stand by"; is essential at present to secure convictions, 2281——But the duty is invidious, and virtually amounts to selection, under circumstances of increased difficulty, 2282-3——And leads to suspicion of "packing," more than the old system of selection by sheriff, 2407-9.

Conduct of juries: Hopeless to expect convictions in any case connected with land, 2293, 2299, 2301——Disposition to acquit in cases of assault and faction fights where there is no "unnecessary violence" used, 2294-8——General prevalence of terrorism at present, 2306-7——This, rather than want of intelligence, is the cause of the evil, 2396.

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Report, 1881—*continued.*

Gibson, John George, Q.C. (Analysis of his Evidence)—*continued.*

Change of venue; suggests leaving it, in criminal cases, to discretion of the Crown, instead of to Court of Queen's Bench, 2344; 2358——Failing this, would let application be made to other judges besides those of Queen's Bench, and to a judge in chambers, 2360–1——But not to a single judge of assize, 2360——Importance in certain cases of changing venue, 2424——*i. e.*, to cities like Cork or Dublin; a mere change of counties would not suffice, 2372.

Magistrates: would extend their summary jurisdiction to cases where verdicts are usually unsatisfactory, 2346-7——Such as minor cases arising out of agrarian matters, 2348——This, to secure certain and prompt punishment, 2349–50——Would leave power of appeal from magistrates unchanged, 2352-4.

Would empower judge in criminal cases to decline to receive a perverse verdict, as in civil cases, 2361-6——With power to direct a new trial, with change of venue, 2384-9, 2424.

Approves having agrarian and assault cases tried by a special jury, as more likely to lead to convictions, 2377–9——Might be desirable at present to enable Attorney-General to send certain cases to a Special Commission; but doubts if he would exercise his power, 2381-3.

Glass, Mr. Murder of, *Barry* 1463.——See *Montgomery Trial.*

Grand Juries. Attendance of jurors on, generally quite sufficient, *Purcell* 34.

Complaint that they take away higher-class jurors from common juries, *Purcell* 35–6; *Hamill* 1863; *Morphy* 1985, 2111. 2032; *O'Hagan* 2173–4; *Kelly* 3037–8; *Nehgan* 3416; *Macdonnell* 3579——These jurors not absolutely disqualified by law, but practically escape service on common juries, *Kelly* 3011, 3088–9——They often serve on common juries in Cork, *Blake* 2780.

Statement that jurors were taken, under Lord Chancellor Blackburn, from grand juries for trial of agrarian murders, *Bence Jones* 582——Impossible, because illegal; the statement must have been made on hearsay, and is mistaken, *Huggard* 981.

Proposal to qualify sons of grand jurors for service on common juries, *Fitzgerald* 2983.

Experience that grand juries rarely ignore bill, *Nehgan* 3467-8; *Morris* 3701–3——Their investigation extremely imperfect and impartial, *Nehgan* 3470-5——Proposal that, as a substitute for bill, the Attorney General should direct an indictment, *Hamill* 1771, 1862; *Nehgan* 3466, 3486.

Practice of canvassing even grand jurors; instance at Bantry cited, *Bence Jones* 505——No knowledge of any such canvassing or pressure, *Nehgan* 3476.

Abolishing grand juries would be a slight improvement, but a great innovation; and would have to be extended to England, *Morris* 3698-3700——Impression against abolishing them as a criminal inquest, *Justice Fitzgerald,* 4226.

(*At Assizes.*) Their abolition recommended, *Morphy* 2032; *Kelly* 3037, 3087——Are useless in Crown cases, but would not abolish them, *Nehgan* 3465–6, 3485——There might be difficulties in so doing, owing to their fiscal business; it is a large question, *O'Hagan* 2174——Important to retain them, in the event of some great constitutional question arising between the Crown and subject, *Bolton* 3945.

(*At Quarter Sessions.*) Their abolition recommended in criminal cases, as being useless and a waste of power, *Hamill* 1771–8; *Morphy* 2032–3; *O'Hagan* 2173-4; *Kelly* 3037, 3087-9; *Ferguson* 3335; *Nehgan* 3416-7; *Macdonnell* 3579; *Bolton* 3944, 3947: *Lawson* 4119——Failing this, would at least reduce their number, *Hamill* 1777——Rather than abolish them, would ballot surplus, after twenty-three are chosen, for service on common juries, *Boyd* 2534–9——No reason for abolishing them at quarter sessions, if not at assizes; impression against expediency of abolition in either case, *Justice Fitzgerald* 4226.

Recommendation of Committee to dispense with grand juries for criminal business at quarter sessions; *Rep.*, paragraphs 41, 42.

Greene, John Ball. His recommendation, in 1874, to amalgamate county and city panels of Dublin, *Edmondson* 485.

Griffiths' Valuation. Operation of, in Tyrone, *Buchanan* 320.

Grogan. Trial of, referred to, *Bolton* 3863.

Guillamore, Lord Case of process-serving on his property; assault on his bailiff and sub-agent, *De Moleyns* 1616; *Leahy* 3617-9.

"*Guinea Pigs.*" Class of professional jurors, so called, *Molloy* 603-6.

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Report, 1881—*continued.*

H.

Hamill, Arthur. (Analysis of his Evidence.)—Is Chairman of the County of Roscommon, 1757——Was a practising barrister, from 1854 to 1879, on North Eastern Circuit, 1758, 1823-6——Gave evidence before Commons' Committee in 1874; 1759——Has been Chairman of the county for ten years, but confines present evidence to circuit experience, 1761, 1824.

Adheres to former approval of the change in jury system effected by Act of 1871; 1760——Considers conduct of juries generally satisfactory, putting aside present agitation, 1763, 1830——Except in agrarian cases, 1764-6.

Recommends abolition of sessional grand juries, having regard to paucity of jurors, 1771-8, 1863——Or, as an alternative, would reduce their number, 1777——And in lieu of a bill, would make Attorney General, or his deputy, direct the indictment, 1771, 1862.

County jurors more numerous than under old system of selection; the change to rating in 1871, with a low standard, brought in too many jurors, 1779, 1861——Would raise present qualification, to improve their quality, *ib.*——This would not necessarily lessen powers of Crown as to right of ordering jurors to "stand by," 1858——Statement as to proposed standard of qualification for common and special jurors, 1862.

Attendance of jurors good except in rare cases, 1782——Fines generally enforced unless for some very good reason, *ib.*

Objects to exemptions under Act of 1876 as too numerous, 1784——But would disqualify publicans rated under 25 *l.*, 1785.

Recommends liberal use by Crown of power to order jurors to "stand by," in case of jurors tainted by prejudice; good effects of so doing in Leitrim, 1787-8——Jurors so challenged have seldom to be recalled, *ib.*——Would not limit present powers of Crown, 1820.

Change of venue; prefers present application to full Court of Queen's Bench to decision by a single judge, 1791-1800.

Magistrates: Would increase their jurisdiction, but with qualifications, viz., would have magistrate's court composed of two stipendiary magistrates, with power of summary conviction for all minor offences, *e.g.*, those connected with land, Boycotting, cases of intimidation, ringing bells, &c., 1801-9, 1870-90——And with power of punishment up to three months, 1887-90——No appeal to lie except in certain larceny cases, and unless punishment exceeds 20 *s.* fine or a month's imprisonment, 1802-9——Object of this to relieve the ordinary local magistrates, and to secure promptness and certainty of conviction, 1837, 1390.

Right of challenge: Would reduce peremptory challenges from twenty to ten, but not in capital cases, 1819, 1863——Would retain six challenges in misdemeanour cases, 1892-4.

Hamilton, Thomas. (Analysis of his Evidence.)—Is Resident Magistrate for Portarlington; has been so for fourteen years, and twelve years of that time was in Queen's County, 1113——Opportunities of watching action of jurors at assizes and quarter sessions, 1114——Was a constabulary officer before a resident magistrate, 1129——Was resident magistrate at Cork for two years, 1130.

Has no confidence in juries at present in cases when the Crown prosecutes, or cases of a Land League tinge, or assaults, or agrarian offences, 1115-6——Ascribes this misconduct to positive fear as well as sympathy, especially at quarter sessions, where the jurors are of too low a class, 1119-20.

Doubts if raising the qualification, say to 50 *l.*, would ensure righteous verdicts or a sufficient supply of jurors, 1124——Found conduct of jurors very unsatisfactory, even before present agitation, 1125, 1131.

Witnesses are constantly intimidated; so much that evidence cannot be got in criminal cases, 1132-3.

No change that would be practical in the constitution of juries would make them efficient at present, 1144——Jury system at quarter sessions has long been unsatisfactory, and particularly so since Land League agitation, 1145.

Recommends a Commission of Judges to ensure proper verdicts; though this would not ensure getting evidence, 1135——At quarter sessions would provide for abolition of jury by Chairman or County Court judge, sitting with magistrates, 1137-41——And with summary jurisdiction, 1150.

As palliatives, but not remedies, would reduce number of challenges allowed to prisoner: he challenges not from fear of prejudice but of impartiality, 1146-7——And would raise the qualification; this would ensure a better class of jurors, *ib.*

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Report, 1881—*continued.*

Hamilton, James Paumier, Q.C. (Analysis of his Evidence.)—Is Recorder of City and East Riding of Cork, 3276——Was examined before House of Commons' Committees in 1873 and 1874; 3277——Was a circuit-going barrister in Ulster, and Chairman of County Sligo until last two years, 3286.

Act of 1871 generally inadequate to meet present unsettled state of things, 3278——Cites letter describing operation of Act, *ib.*

Jury system encourages, instead of preventing crime in many parts of Ireland; in the disturbed parts it is looked upon as the palladium of wrong-doers, 3278, 3318——Owing to intimidation it makes jurors violate their oaths, and so demoralises them, 3291——No mere modification of trial by jury would cure the present state of things, 3292-3, 3298.

Prefers system of selection by sheriff, but fears it is impossible to revert to it, 3279——A rating qualification seems the only feasible one at present; there are so few leaseholders and freeholders in Ulster, *ib.* 3280——But if qualification were raised very much, there would not be enough jurors in some parts, 3281——To meet this difficulty the number of juries should be reduced to six; advantage of so doing in all civil and criminal cases, 3282, 3299.

Experience, except in Ulster, that there is no prospect of proper verdicts in agrarian or political cases, 3285-7——The Land League is the source of all this evil and of all crime in Ireland, 3287.

Power of Crown to order jurors to "stand by" is a necessity at present, and must be exercised largely, to secure a chance of a verdict; but it is in fact a system of jury-packing, and one of the worst kind, 3292.

Has little faith in changing venue; cites instances in support of opinion, 3294, 3317, 3319-22——A change from a southern to northern county would be considered grossly unfair, and would lead to a violent outcry, 3294.

Jurors influenced by terror and sympathy, *i.e.*, sympathy, if not with crime, at least with the objects which the crime is expected to further; these objects, in plain words, are communism and the destruction of landlordism, 3294.

Summary jurisdiction of magistrates should certainly be increased, to include cases of riot and aggravated assaults, 3295.

Stipendiary magistrates should be increased in number; experience in favour of military men, 3296.

Would suspend trial by jury in districts proclaimed by Government except perhaps in cases of ordinary assault and larceny; many jurors would hail this with secret satisfaction, so much do they hate serving during present reign of terror, 3282, 3308-10——All well-disposed people would rejoice to see the change, 3335.

Approves sending agrarian cases for trial at assizes instead of quarter sessions, 3312——Would have such cases tried by two judges without a jury, 3314.

Abridging right of peremptory challenge might improve juries, by preventing exclusion of respectable jurors, 3323-6——Jurors dare not convict; it is not that they are not intelligent enough to find proper verdicts, 3318, 3332-4.

Harvey, T. Newenham. Communication of, with Dublin Jurors' Association, *Edmondson* 491.

(Analysis of his Evidence.)—Is a printer by trade; has studied the Jury Laws carefully for last three years, both as a juror for many years, harassed with incessant service, and as honorary secretary of the Waterford Jurors' Association, 811-2——States objects of the Association's petition to Mr. Lowther, 821——Confines his evidence respecting city jurors to Waterford, 823.

County jurors: qualification for, too low, both as to house and land, 813, 816——Hardship entailed on poor jurors from having to travel long distances; relief granted by Act in certain cases, not generally known by them, 813-6.

City jurors: qualification for, too high to secure sufficient jurors; consequent strain on those who serve, 818——Conduct of, satisfactory, 825.

Revision of jury lists insufficient at present to exclude illiterate jurors; want of compulsory investigation by poor rate collector, 818——Duties of alphabetical selection misunderstood by sub-sheriff, *ib.*——Want of accurate inquiry as to exemptions, 822——Believes heavier fines would probably be evaded, 823.

Agrees with Mr. Byrne's suggestion to reduce number of jury, but would reduce to seven only, five to carry a verdict, 823.

Hatton, Mr. Evidence of, before Committee of 1839, *App.* A., p. 471.

"*Hearts of Steel.*" Legislation consequent on outbreak of, *App.* A., p. 470.

Hefferman, Dennis. Murder of, *Bolton* 3847.

High

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Report, 1881—*continued.*

High Treason. Prisoner's right of challenge in cases of, *Molloy* 637.

Household Qualification. Under Act of 1833, *App.* A., p. 471.

Howley, Sir John. Opinion of, concerning grand juries, *Bolton* 3944.

Huggard, Stephen. (Analysis of his Evidence.)—Is Clerk of the Crown and Peace for County Kerry; was appointed Sessional Crown Solicitor of Kerry in 1875, Clerk of the Peace in 1878, and Clerk of the Crown and Peace in 1880; 827——Has been a solicitor since 1848; and practised for thirty-two years in Kerry, 884, 960.

Qualifications under Act of 1833 were too various, and difficult to find out, 833–5——The Act also defective from want of tenement valuations in Ireland, 971.

Rating qualification an improvement; the change was necessary, 831-3——Approves Act of 1876, so far as it raised qualification in country parts; but objects to its lowering qualification in towns; would revert in latter case to Act of 1873; 963——Suggests raising it to 50 *l.*; this would leave an ample supply of jurors, 964, 973–4——Advantage of raising qualification, as a means to reduce excessive number on lists, and secure better quality of jurors, 963, 966.

Class of jurors generally improved by Act of 1871; 830——The new system worked unsatisfactorily at first, owing to novelty; but was beginning to work well till present agitation, 837, 878, 915——Since then, distinct change for worse in certain cases, 837, 877-80.

Untrustworthiness of juries in cases, civil and criminal, connected with occupation of land, 853–5——Cases of wrong acquittals in assault cases; tendency to regard such offences as trivial, 849-52, 874.

Difficulty of obtaining proper verdicts in agrarian cases; instances of misconduct cited, 837 8, 844–7——This due mainly to general sympathy with present agitation, 839, 857, 895–7——Jurors are not particularly intelligent, but quite enough so to find right verdicts if they would, 896, 910–11——Disbelief in any partial admixture of better class jurors as a cure for present failures of justice, 867, 946–7.

Right of challenge: private opinion that the reasons for a peremptory challenge no longer exist; but as it is old, would have a compromise, and reduce number to ten at the outside, 858–9——Present right of twenty challenges excludes minority of respectable and independent jurors, 860——Would abolish peremptory challenges in cases of misdemeanour, and give prisoner his full right of challenging for cause only, 861——Difficult to imagine any hardship from this, proof of objection need only be slight, and judge would always listen to reasonable cause, and order juror to stand by, even if he did not object to himself, 862–3, 901–3.

Verdict by majority would act fatally: result would be a wrong verdict by the bad majority, 868——Acquittals would follow, instead of disagreements, 956-8.

Intimidation, where practised, is not directed to jurors as jurors, 968——Not necessary when verdicts are one way, as at present, 871, 892, 967.

Experience that old jury system worked well in Kerry, even in times of excitement and in cases connected with land, 885–7——Period of Phœnix Conspiracy an exception; but system was not answerable for that, *ib.* 891.

Difficulty at present of obtaining evidence, 907–8, 919, 944–5——Ascribes this to sympathy with accused, 908–9.

If Land Act pacifies Ireland, believes the existing jury system, which was beginning to work well, may be restored to its former condition, 915——If the Act fails, some substitute must be found for trial by jury in agrarian cases, 915.——Proposes, as such substitute, trial by one or more judges, till order is restored, 916–7, 930–4.

Change of venue to England desirable in agrarian cases, 925-6——A change to Dublin only would not be enough, and would overtax Dublin jurors, 929, 955.

General feeling of antagonism to law, not as law itself, but as working an injustice; this feeling conspicuous in agrarian cases, 948–9——Jurors think they are doing real justice by refusing to administer the law, 950.

Canvassing jurors, cases of, before present agitation, 852, 951.

Alphabetical rotation approved, as the best means of obviating the objections to old system of selection, 976.

Favourable experience as to attendance of jurors, 985——Discretion as to remitting fines is fairly exercised, *ib.*

Contradicts Mr. Benee Jones' statements as to outside pressure being put on Crown Solicitors, and grand jurors being called to serve on common juries, 981.

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Report, 1881—*continued.*

1.

"*Idleness and Disorder.*" Cases defined as, in Act of 1872, *Lawson* 4162.

Income Qualifications. In Jurors' Act of 1876; these are practically non-existent, *Gibson* 2284.

Suggestion that an income of 100*l.* or 200*l.* a year, from whatever sources, should qualify for service on juries, *Kelly* 3067–74.

See also *Freehold Qualifications.* *Leasehold Qualifications.*

Informer. Instance cited, of an informer being shot a month afterwards, in Australia, *Blake*, 250, 256.

Intimidation:

(Of Jurors.) Prevalence of, shown by variance between informations of witnesses, and evidence at trial, *Purcell* 68——Is one of the causes of failure of present jury laws, 112, 116–7.

Cases known of jurors having been visited and warned before the assizes, *Blake* 135–6——Acts now as an effectual deterrent in almost all the south and west of Ireland; and in agrarian cases even in ordinary times, 137–8——Hardly necessary in cases of ordinary assault, the punishment being so light, 139.

No experience of, in Tyrone, *Buchanan* 327——No cases known in Kerry of actual threats or intimidation; no necessity for it when there is so much sympathy with accused, *Huggard* 871, 892, 967——No recollection of any positive threats being complained of by jurors, *Barry* 1342.

No knowledge of violence or actual threats after trial, *Molloy* 712——Contrary evidence; case cited of a juror having suffered for doing his duty, *De Moleyns* 1713——Such threats before trial are a matter of notoriety, *Purcell* 41——Instance cited of a juror being threatened after verdict, *Leahy* 3621.

Cases of, at Dublin; it is notorious there and elsewhere, and renders trial by jury a perfect farce, *Byrne* 781–5——No recollection of any cases of, in Dublin; not even during recent State Trials, *Edmondson* 446–52, 476–8.

No actual intimidation known in County Cork; but there is pressure, amounting to veiled intimidation, *Bence Jones* 506–7, 557–64.

Instance of, in trial for murder of Mr. Boyd; trial postponed from non-attendance of jurors, *Slacke* 997——More practised in jury-room than out of it, 992, 1039——Cases known of jurors being marked in court, *Lawson* 4121; *Justice Fitzgerald*, 4188.

Is universal in agrarian and political cases, *Hamilton* 3283–5——So common in criminal cases generally as to prevent evidence or convictions, *Hamilton* 1132–3.

Liability of present jurors to, as a class; cases known of their being waited for on going into court, *Mitchell* 1905——Deterrent effects of, on better class jurors in country districts, *Ferguson* 3343; *Whitney* 2631. See also *Threatening Letters.*

(Of Magistrates.) Liability of local magistrates to intimidation, *Whitney* 2647–52, 2728–30; *Lloyd*, 3204–5, 3274——No such experience in Kerry, *Morris* 3673——Cases known of magistrates having been threatened, *Kelly* 3115–8; *Macdonnell* 3601–3.——See also *Magistrates.*

(Of Witnesses.) Frequency of intimidation, *Hamilton* 1132–3; *Bolton* 3925——Consequent difficulty of obtaining evidence except through police, *Blake* 201–2——Is more far-reaching now than twenty years ago; the organisations are so complete, and extend abroad; a man is safe nowhere; instance cited, 203, 249–50, 256.

See also *Evidence.*

Ireland, State of. General laxity of feeling with regard to crime, *Bence Jones* 580–1——Popular antipathy against the upper classes, *Morris* 3670——Particular reluctance of residents in small county towns to administer the law, *Byrne* 799——Exodus of country gentlemen from disturbed districts, *Lloyd* 3195——Non-enforcement of law and order, *Bence Jones* 586, 591.

Demoralizing effects of present agrarian agitation on the conduct of juries, *Purcell* 6–9; *Byrne* 753, 785; *Huggard* 879–80; *Slacke* 994, 1038–41; *Barry* 1375; *Whelan* 1540; *De Moleyns* 1611; *Hamill* 1763; *Morphy* 2017; *O'Hagan* 2178; *Gibson* 2299, 2306; *Whitney* 2570–2; *Kelly* 3029–30; *Lloyd* 3180–4: *Hamilton* 3288; *Ferguson* 3404; *Nelligan* 3411; *Macdonnell* 3548; *Leahy* 3617, 3638; *Morris* 3675; *Bolton* 3876; *Lawson* 4040–5; *Justice Fitzgerald* 4195–6, 4234.

Wide-spread character of the agitation, *Lloyd* 3197——Its communistic objects, *Hamilton* 3294.——Extent of, in Limerick, Westmeath, &c.——See *Limerick, Westmeath, &c.*

See also *Agrarian Offences.* *Land League.* *Law.*

Irish

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Irish People. Ingenuity of Irish character, *Bence Jones* 574; *Harvey* 823——Fondness of, for trial by jury, especially in civil cases, *Ferguson* 3376——General readiness to sign memorials for anything, *Bence Jones* 544——Strong feeling among peasantry that everything depends on the influence brought to bear before trial on the magistrate, 585.

Irish Lights Board (Dublin) Exemption from juries claimed by clerks in, *Fitzgerald* 2990–4.

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Johnstone, Mr. Conviction of, *Lloyd* 3220.

Jones, Bence. (Analysis of his Evidence.)—Is a resident proprietor in Ireland; has known the country for more than forty years, 493-4——Acquaintance with jury system as a special juror and magistrate at quarter sessions, 495–6——No experience as a juror in criminal cases, 502.

Result of Act of 1871 has been to increase difficulty of convictions, 498–9, 511——Painful experience, as a special juror, of misconduct of juries in civil cases owing to religious differences, 500–3, 539——Insufficiency of a higher qualification to cure this evil, 505.

Canvassing is a regular system, and extends to grand juries, 505——General want of moral principle among jurors: this want of character affects everything, *ib.*, 509-10——Impossibility of proper verdicts where police are concerned, 515——Or in agrarian cases, 552-5.

Uncertainty of law increased by action of Government; complaint as to letting off prisoners on their recognizances after pleading guilty or being convicted, 515–38——Interference of priests on behalf of accused, 524, 534——Non-enforcement of the law, 543.

Influences brought to bear on jurors, short of actual intimidation, 506, 557-64.

Verdict by majority would not mend matters, or prevent the verdict being jobbed, 573, 587——The only remedy would be to empower three judges to try case, as in Canada, where an honest jury could not be had, 575——Certainty, not severity, of punishment is the thing needed, 576–9, 589—— General laxity of feeling with regard to crime, 580–1.

Statement as to taking common jurors from grand jury panel in special commissions under Lord Blackburn, 582.

Judges. General confidence at present in the judges. *Barry* 1449; *Kelly* 3102——Objection to having the judiciary concerned in anything out of the region of constitutional law, *Barry* 1450.

Powers of, with regard to correction of jurors' books, *Edmondson* 419; *Molloy* 599.

Law defective in not fixing upon the judge some responsibility with regard to the verdict; proposal to give him a vote, *Byrne* 753, 775.

Powers of, with regard to fines for non-attendance, *Blake* 175–6. See also *Fines.*

Differences in way of presenting case to jury; effects thereof upon the verdict, *Blake* 219.

Proposal that, in case of a palpably wrong acquittal, the judge should defer discharge of prisoner, and have case remitted to Attorney-General for directions as to trial by judges, *Blake* 166.

Proposal to empower judge to find a verdict in undefended cases, *Monahan* 2271.

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Judicature Act (Ireland). Increase of law business at Dublin in consequence of the Act, *Edmondson* 444.

JURIES (COMMON JURIES):

1. *Composition and Quality:*

Experience that the general mass of common jurors are small farmers and shopkeepers, *Blake* 280; *Huggard* 829, 840–1; *Slacke* 990; *Bottomley* 1197; *De Moleyns* 1604, 1614; *Hamill* 1769; *Mitchell* 1910; *Morphy* 1978; *O'Hagan* 2133; *Gibson* 2285–6; *Boyd* 2442; *Whitney* 2559; *McBlaine* 2761; *Fitzgerald* 2893; *Kelly* 3011; *Lloyd* 3192; *Macdonnell* 3539–41; *Leahy* 3627; *Moore* 3983; *Lawson* 4030; *Justice Fitzgerald* 4177——Close connection of these tradesmen in county towns with agricultural population, *Huggard* 841–3——Almost all country shopkeepers are small farmers as well, *Blake* 281.

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JURIES (*COMMON JURIES*)—continued.

1. *Composition and Quality*—continued.

Want of diversity in composition of juries since 1871, owing to uniformity of qualification, *De Moleyns* 1604, 1614——Rarity of tenant farmers on old lists, *Bolton* 3932.

Great variety in composition of juries on North-Eastern Circuit, *McBlaine* 2759-69——Wholesome effect of mixture of classes in Louth, 2763——And in Cork, *Blake* 2777-84.

Impossibility of having juries composed wholly of gentry, *Purcell* 102.

Great change in position in life of jurors since the Act of 1871, *Huggard* 830——They are not good enough for important cases, setting aside present agitation, *Slacke* 1040-1——Inferior quality of jurors in small county towns, *Byrne* 799.

Class of jurors much the same at assizes and quarter sessions, *Bence Jones* 496——Proposal to have a distinct class for service at assizes, *Slacke* 1022, 1048.

Want of intelligence complained of, *De Moleyns* 1676; *Mitchell* 1915——Incapacity to discriminate evidence, *Barry* 1381; *De Moleyns* 1723——Want of training in this respect, *Kelly* 3025, 3099, 3100——They seem not to wish to understand, *Boyd* 2440.

No reason to complain of any want of intelligence, *Buchanan* 317; *O'Brien* 2197; *Corcoran* 3512-3——This is not the main fault; they are quite as intelligent as English agricultural juries, and more so perhaps than Welsh juries, *Hamilton* 3332-4——Intelligent enough for ordinary cases, *Gibson* 2396; *Boyd* 2439.

Obtuseness in appreciating evidence in some cases, but not in others; inference from this that misconduct arises from perversity, *Purcell* 42, 115.

Improvement, as regards intelligence, under new system, *Ferguson* 3339; *Justice Fitzgerald* 4193-4——Contrary experience, *Bottomley* 1160——Excellence of jurors under old system, *Buchanan* 296.

Disbelief in any modification of the composition of juries as an adequate remedy for failures of justice in agrarian cases, *Lloyd* 3271-2; *Hamilton* 3292-3.

See also *Number of Jury.*

2. *Character and Conduct:*

Favourable evidence as to juries in Tyrone, *Buchanan* 308-10, 317-9——On North East Circuit, *Justice Lawson* 4028——On Home Circuit, *Molloy* 628-9, 706-7——In Antrim, *Bottomley* 1198-9, 1239-42, 1282-3——In Queen's County, *Corcoran* 3512-3——In Louth and Down, *McBlaine* 2745-52——In Londonderry, *Fitzgerald* 2894; *Errington* 3784——Waterford city jurors, *Harvey* 825——Belfast city jurors, *Blake* 206-7, 268.

Improvement effected by Act of 1871, *Molloy* 602-3; *Hamill* 1760-3; *Huggard* 837; *Lawson* 4025-8——Contrary experience, *Purcell* 8; *Blake* 192; *Bence Jones* 498, 512; *Hamilton* 1126-8, *Whelan* 1530-40; *Morris-Reade* 1054-5; *De Moleyns* 1666-7; *Boyd* 2428-34.

Favourable evidence as to conduct before present agitation, *Hamill* 1763; *Whitney* 2572; *Lloyd* 3180.

Demoralising effects of present agitation, *Purcell* 6-9; *Byrne* 753, 785; *Huggard* 837, 877-80; *Slacke* 994, 1038-41; *Barry* 1375; *Whelan* 1540; *De Moleyns* 1608, 1611; *Hamill* 1763; *Morphy* 2017; *Mitchell* 1911-3; *O'Hagan* 2178; *Gibson* 2299, 2306; *Whitney* 2570-2; *Kelly* 3029-30; *Lloyd* 3179-84; *Hamilton* 3288; *Ferguson* 3404; *Neligan* 3411; *Macdonnell* 3548, 3560; *Leahy* 3614-7, 3638; *Morris* 3675; *Bolton* 3876; *Lawson* 4040-5; *Justice Fitzgerald* 4195-6, 4234.

Complaints of misconduct before present agitation, *Hamilton* 1120-1; *Barry* 1335, 1368; *De Moleyns* 1611; *Morphy* 2017; *Dowling* 3139.

Good experience of juries under old system, *Buchanan* 296; *Huggard* 884-7; *Bolton* 3927-34; *Morphy* 2052-4.

Untrustworthiness of juries in Crown prosecutions, *Hamilton* 1115——In cases where police are engaged, *Bence Jones* 515;——In criminal cases generally, *Leahy* 3614-5——In any cases where a "disturbing element" intervenes, *De Moleyns* 1608; *Hamill* 1763-6. See also *Agrarian Cases. Assaults. Party Cases. Political Cases.*

Causes of Misconduct, viz.:

General want of honesty and moral principle, *Blake* 134, 140; *Bence Jones* 505-9, 550; *Whelan* 1559.

General disinclination to support the law, *Purcell* 7, 96; *Blake* 235-7: *Bence Jones* 503, 510, 513, 580; *Morris Reade* 1051-3; *Hamilton* 1117; *De Moleyns* 1612, 1678; *Mitchell* 1919; *Bolton* 3865, 3872——Particular aversion to the law in certain cases, *Huggard* 948-9; *Slacke* 1008; *Barry* 1336; *Hamill* 1772; *Dowling* 3141; *Justice Fitzgerald* 4190; *Rep.*, paragraph 18.

Want

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2. *Character and Conduct*—continued.

Causes of Misconduct—*continued.*

Want of intelligence, *Barry* 1333-46; *Neligan* 3413——Contrary opinion, *Hamilton* 3332-4; *Justice Fitzgerald* 4192——Perversity rather is the cause, *Bottomley* 1307; *Purcell* 115; *Rep.*, paragraph 18.

Sympathy with the accused, *Purcell* 96; *Blake* 134; *Mitchell* 1912, 1918——This especially in party cases, *Whelan* 1594——And in land cases always, *Whitney* 2627-8——Self-interest rather than any sympathy with crime, *Lloyd* 3188——Sympathy, whether with crime or the criminal, certainly with the evidence for the defence, *Neligan* 3413——Sympathy generally, conjointly with fear, *Byrne* 742-52; *Hamilton* 1120; *De Moleyns* 1612——Personal sympathy with prisoner as a friend, *Barry* 1333, 1475; *Dowling* 3142, 3157——And as one of their own class, *Boyd* 2435-8——Instance cited in proof of this, *ib.* 2541; *Rep.*, paragraph 18.

Local prejudice, especially in agrarian cases, *Bence Jones* 552; *Kelly* 3100.

Party and case prejudice, *Whelan* 1531——Religious prejudice, *Bence Jones* 513, 552.

Sympathy with present agitation, *Huggard* 857, 895-7; *Slacke* 1008; *Hamilton* 3294.—— See also *Agrarian Agitation.*

General laxity of feeling with regard to crime, *Bence Jones* 544, 580, 583-4.

Want of regard for oath, *Mitchell* 1917.

Indifference and inattention to evidence and charge of judge, *Bolton* 3864.

Intimidation and fear, *Byrne* 742-52; *Slacke* 994. 1039; *Whelan* 1595; *Morphy* 2005; *O'Brien* 2195-6; *Gibson* 2306-7, 2396; *Lloyd* 3186-7; *Hamilton* 3308-11; *Leahy* 3634-43; *Justice Fitzgerald* 4234; *Rep.*, paragraph 18——Threats or influences in jury-room in particular, *Slacke* 994, 1039——General dislike of unpopularity, *ib.* 992.

Juries (*Ireland*) *Act*, 1833. Came into operation in 1835, *App.* A., p. 470——Its main provisions stated, *ib.*; *Morris* 3652——Various qualifications under; these a source of confusion, *Huggard* 833——Defects of, as regards qualification, from want of tenement valuation in Ireland, *Huggard* 971——Insufficiency of qualified jurors under the Act, *Buchanan* 296-7; *Molloy* 597, 714; *Mitchell* 1901-3; *Hamilton* 3280.

Favourable experience of, in regard to jurors, *Blake* 192, 199; *Buchanan* 296; *Mitchell* 1899-1900; *Morphy* 2052-4; *Bolton* 3927-34——Contrary experience, *Boyd* 2428-9.

See also *Juries* (*Ireland*) *Act*, 1871. *JURIES. RATING QUALIFICATION. SHERIFF.*

Juries (*Ireland*) *Act*, 1871. Drafted by witness, *Molloy* 594——Circumstances immediately leading to the Act, 597——Caused largely by experience of defects of old system at Dublin, *Barry* 1333——Did not practically come into operation till 1873, *Fitzgerald* 2885——Its short operation, *Buchanan* 312——Its main objects stated, *De Moleyns* 1603; *Rep.*, paragraphs 1 and 2.

General principles of the Act approved, *Burry* 1327; *Hamill* 1760; *Monahan* 2241; *McBlaine* 2744; *Blake* 2776; *Fitzgerald* 2886; *Feryuson* 3340; *Corcoran* 3512, 3527——Objected to, *Gibson* 2274.

Operation of the Act satisfactory, *Bottomley* 1157; *Fitzgerald* 2886; *Moore* 3963——Capable of improvement in details, *Monahan* 2241——Has disappointed expectations of its success, *De Moleyns* 1602-4——Has worked badly, *Lawson* 4025-6.

Approval of Act, in regard to its abolition of system of selection, *Buchanan* 301; *Whitney* 2546; *Kelly* 2999, 3000; *Justice Fitzgerald* 4172—— Contrary opinion, *Morphy* 1969——The Act fair enough, assuming selection to be impossible, *Ebrington* 3782——If the matter were *res integra*, doubts whether the Act in this respect should have been adopted, *Morris* 3652.

Necessity of Act to remedy want of jurors under old system, *Mitchell* 1901-3.

The changes made were too violent, *Justice Fitzgerald* 4171——The qualification was made too low, *Buchanan* 301; *Molloy* 615; *Hamill* 1861; *Macdonnell* 3536——Intention of Act good, but the innovation too great; the jury boxes being filled with untried jurors, *Hamilton* 3278.

Has increased prisoners' chances of escape, as compared with the old system, *Dowling* 3133.

Has worked fairly until present agitation; but since then its effects have been paralysed, *Neligan* 3409——Would have done very well under a settled state of society; but it only succeeds during lucid intervals, which are few, *Hamilton* 3278.

Has improved the quality of jurors, *Molloy* 603; *Monahan* 2241; *McBlaine* 2745 Though they were awkward at first from inexperience, *Huggard* 837; *Barry* 1333; *O'Hagan* 2128; *McBlaine* 2758; *Fitzgerald* 2917; *Ferguson* 3339——Has failed to improve

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Juries (*Ireland*) *Act*, 1871—continued.

improve quality of jurors, *Macdonnell* 3533——Has brought in jurors quite unfit and unintelligent, *Lawson* 4025-6——And of too humble a class, *Dowling* 3133, 3140——Great change in class of jurors as regards position in life, *Huggard* 830——Various operation and results of Act, in different venues, as regards class of jurors, *Barry* 1333.

Has improved conduct of jurors, *Hamill* 1763; *Boyd* 2428——Contrary opinion, *Blake* 192; *Hamilton* 1126-8; *Whelan* 1530-40——Has failed to cure previous misconduct, *Purcell* 4-8——Works fairly well in minor cases, but fails utterly in agrarian and political cases, *Slacke* 988——More difficult since the Act to get convictions, *Bence Jones* 491, 498, 512——Conduct of new jurors worse at first, but afterwards improved, *Barry* 1420-5——The Act hardly fairly tried at present in this respect, owing to present agitation, *De Moleyns* 1664.

Has been much improved by Acts of 1873 and 1876, *Justice Fitzgerald* 4173.

Duties of sheriff, as regards making out panel, *Purcell* 40; *Edmondson* 415——Provision as to juries struck under old practice, *Monahan* 2248-51.

See also *Special Juries.*

Juries (*Ireland*) *Act*, 1873. A temporary amending Act, made permanent by Act of 1876, *Buchanan* 302-3——Necessity for, owing to shortcomings of jurors under Act of 1871, *ib.*——Good results of raising the qualification, *Molloy* 615.

Juries Procedure Ireland) *Act*, 1876. Main provisions of, *App.* A., p. 473.

Sect. iv: Advantage of the provision requiring jurors not answering names to be resummoned; proposal to supplement this by marking off their names on panel, *Edmondson* 430-4——The section objected to; it works badly in towns owing to constant changes of domicile, *Monahan* 2242-4.

See also *Challenges. Distant Jurors. Exemptions. Fines. Panel. Special Jurors.*

Jurors' Qualification (*Ireland*) *Act*, 1876. Provisions and main features of, *Buchanan* 304; *Harvey* 814; *App.* A., p. 473——A decided advance on Act of 1871, but its benefits largely neutralised by present agitation, *Gibson* 2391-2.

Salutary effects of, as regards raising the qualification, *Molloy* 616; *Buchanan* 302-6, 353; *Huggard* 962; *O'Hagan* 2177; *Fitzgerald* 2890; *Justice Fitzgerald* 4193-4——Failure of, in this respect, *Purcell* 11-2; *Blake* 141-3; *Morphy* 1975-7; *Byrne* 754——In 26 out of 32 counties the qualification was nearly doubled, *Buchanan* 304.

The qualification lowered by, in some cases, *Huggard* 961; *Bottomley* 1162—— The 6 *l.* reduced qualification objected to, as too low, *Whelan* 1532; *Whitney* 2551-6, 2609-17; *Macdonnell* 3536.

As to special qualifications in sect. ii., *Purcell* 26-7; *Buchanan* 336-9; *Edmondson* 411-3, 453-6; *Elrington* 3281; *Gibson* 2284; *Morris* 3657.

See also *RATING QUALIFICATION.*

Jurors' Book Origin of, under Act of 1735-6, *App.* A., p. 469——Improvements made by Act of 1871, *ib.* p. 473.

Number of jurors on, in Clare, Kerry, &c. See *Clare, Kerry,* &c.

Preparation:

Prepared from jury lists, after revision, for use by sheriff at Hilary term the next year, *Edmondson* 472——Made out by clerk of the peace in strict dictionary order, as prescribed by Act, *Huggard* 935——Imperfect adherence to alphabetical order in its preparation, *Blake* 242-6.——See also *Alphabetical Rotation.*

Settled by Chairman, with assistance of clerk of the Crown, clerk of the peace, sheriff, and Crown solicitor, and perhaps some tax collectors, *Kelly* 3068——Settled each October, but practically rules for three years, *Monahan* 2242.

Correction:

Errors unavoidable at present in the case of deaths or removals since revision, *Byrne* 805——Inadequate powers of sheriff to correct errors; he is actually bound to summon non-existent jurors, *Edmondson* 435; *Moore* 4002; *Monahan* 2243——Defects of Act of 1876 in this respect, *ib.* 2244.

Application to Queen's Bench, under old system, to have jurors' book corrected; judges held that they had not powers under Act of 1845; subsequent attempts to remedy this by legislation before 1871, *Molloy* 599, 601.

Errors often due to defects of previous revision, *Moore* 4003.——See *Jury Lists* (*Revision*).

Power

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Report, 1881—*continued.*

Jurors' Book—continued.

Correction—*continued.*

Power of judges to correct proved errors, *Edmondson* 419; *App.* A., p. 471——This power not effectually exercised, *Edmondson* 419, 438.

Plan suggested for more effectual correction of jurors' book, with a view to formation of panel, *Byrne* 805; *Monahan* 2267-8; *Moore* 4002-6.—— See also *Panel.*

General want of accuracy as to expurgation and correction; it seems to be nobody's duty to attend to it, *Justice Fitzgerald* 4227.

Jury Lists. Provision first made in 1725 for a list of jurors, *App.* A., p. 469——Duty of making them out transferred in 1735-6 from sheriff to high constable, *ib.*——Penalties for negligence first imposed in 1745, *ib.*——Haphazard method of making out lists under Act of 1833, *Huggard* 833——Duties of baronial constables under that Act, *Buchanan* 295.

Preparation:

Returns made in first instance by clerk of the union, with assistance of poor-rate collectors, *Buchanan* 370——The names being furnished by the relieving officers, *Blake* 269——These returns kept in office of clerk of the peace, 157.

Carelessness of officials, *Bottomley* 1165——Exempted or disqualified jurors frequently returned; imperfect investigation of poor-rate collectors in this respect. *Whitney* 2565, 2618-9; *Harvey* 818——Jurors often not summoned, *Blake* 154-8——Old lists often handed in again, and dead or absent jurors thus returned, *Bottomley* 1228——Names, actually struck off at the revision, returned again, *Blake* 269; *Whitney* 2683-4; *Moore* 3969; *Macdonnell* 3585.

Payment of officials: 4*d.* per name paid to relieving officer and clerk of the union, under Act of 1876, *Blake* 269; *Buchanan* 371——Objection to paying by mere number of names, whether right or wrong, *Macdonnell* 3586-7——Poor-rate collectors paid by grand jury, *Buchanan* 371.

Penalties for mistakes: Proposal to deduct from pay for names improperly returned, *Bottomley* 1321; *Macdonnell* 3588——Suggestion to fine, *Whelan* 1574; *Justice Fitzgerald* 4229-31——Belief that fine, contemplated by Act of 1876, applies only to wilful mistakes, *Bottomley* 1321.

Difficulty of ascertaining whether jurors are qualified or not; proposed remedy, *Edmondson* 442.

Opinion of Committee that the imposition of a slight fine for every name improperly included in the list would secure greater exactness in its preparation, *Rep.*, paragraph 56.

Revision:

The lists very well revised now, *Buchanan* 372——Unsatisfactory means of revision under the old Acts, *Molloy* 599——Impossibility of excluding jurors on account of character, *Purcell* 22, 102.

Evidence pointing to defects in revision, *Edmondson* 437-9, 489; *Monahan* 2242-3; *Moore* 3968-74; *Justice Fitzgerald* 4227.

Quarterly, instead of annual, revision recommended, *Edmondson* 419, 441; *Monahan* 2244——Once a year would be enough, if the revision were strict, *Bottomley* 1258——And if more care were taken in making the primary returns, *Whitney* 2565-8——Annual revision gives much trouble and expense; biennial revision suggested, provided the lists are properly made out, *Justice Fitzgerald* 4223.

Proposal to have jury lists sent, in first instance, to justices at petty sessions, and then to clerk of the peace for revision by chairman, *Justice Fitzgerald* 4229.

See also *Jurors' Book.*

K.

Kelly, Charles, Q.C. (Analysis of his Evidence.)—Chairman of county Clare for last three or four years; was previously Chairman of county Longford for thirteen years; is a magistrate for county Galway; practised many years on Connaught circuit; has ceased to practise since the change to Clare, but attended Galway Assizes regularly up to that time, 2995-7——Has lived for last two years on his own property in Galway, 2998.

Approves abolition of sheriff's power of selection, as having been open to suspicion of abuse, 3000-1.

Rating qualification sound in principle, but it ought not to be the only one, 3002-3——Present qualification too low, particularly that for land; would raise it to 80*l.* or 100*l.* for common jurors, 3005-10——Would disqualify all publicans, however highly rated, 3007.

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Kelly, Charles, Q.C. (Analysis of his Evidence)—*continued.*

Juries in Clare too exclusively composed of farmers, 3011——General unwillingness of all classes to serve, 3013-7.

Complains of grand juries being practically relieved from service on common juries, 3011, 3088-90——The grand jury absorbs nearly all special jurors, 3038——Would abolish grand juries at assizes and quarter sessions; they are useless and their duties a mere form, 3037-9, 3087-8.

Right of challenge operates to exclude the better class jurors, 3018-20——And in the case of special jurors struck under the old system, it is fatally injurious, 3022-4——Twenty challenges for felony are too many, 3046.

Hopelessness of getting verdicts in cases connected with land or local feeling; this due to prejudice rather than perverseness, 3025-8——Juries cannot distinguish evidence, and do not appreciate their duty; they consider whether accused should be punished, not whether he committed the act, 3029-30——Would have verdict of majority, say two-thirds, 3031, 3033——Important to get more gentlemen on the jury; even a few would have great influence, 3032.

Would suspend trial by jury, during present craze, in a certain class of cases, and have trial by judges, *i.e.*, two judges of the superior courts, or one judge and two Queen's counsel or two chairmen, 3035-6, 3102——This the only remedy at present in such cases, 3147.

Would abolish all sessions for criminal cases, except at the assize towns, 3040——This could be done by Privy Council without any Act; the difficulties are purely those of local feeling, 3097.

Would diminish the number of sessions at which jurors are required; this would avoid much waste of attendance, 3042, 3096.

Would empower Attorney General to change venue wherever he certifies it is necessary, and that there is local feeling, 3048-9, 3104.

Complains of local magistrates sending cases for trial which they ought to deal with summarily, 3050, 3055, 3113——Would extend their jurisdiction, but with a stipendiary magistrate to assist them, and subject to an appeal, in every criminal case to the chairman at quarter sessions without a jury, 3051-6, 3063, 3106-8, 3111——Would make it compulsory on them to exercise their jurisdiction when defined, 3058, 3091-4.

Exemptions at present far too numerous, 3066-7——Would qualify every one with a certain annual income of say 100*l.* a year; no reason for having the rating solely dependent on land, 3067——And would leave chairman to put on the lists all possessing this income qualification, 3068-74——Income and education are the best tests for competency, 3098.

Would require nine-tenths of the panel to be present before a trial is allowed to go on; this to enforce attendance of jurors who disregard fines, 3077-86——Would have all the panel drawn by lots, 3087.

Would empower Attorney General to call for a special jury under present system for criminal cases, 3048, 3104.

Would have magistrates serve as jurors at quarter sessions; they are exempted as judges, but practically they do not attend, 3011, 3126-7——Would strike off those who neglect attendance, 3062.

[Note added to Evidence.] Suggests giving jury power to find a verdict of "Not Proven," and reduction of number of jurors to nine or even six.

Attributes failure of justice in criminal cases largely to defects in criminal procedure, and also to unwillingness of witnesses to give evidence.

Kelly. Trial of, for shooting police-constable Talbot, *Molloy* 669-75——Case cited as a notorious failure of justice, *Byrne* 747-9.

Kellys, The. Trial of, for murder of Mr. Bateson, *Moore* 3980-1.

Keogh, Mr. Justice. Conviction for burning him in effigy, *Concoran* 3513——His Bills of 1854 and 1856, respecting rating qualification of jurors, *App.* A., p. 473.

Kerry. A most peaceable county until the last few years; except during time of Phœnix Conspiracy, *Huggard* 888-90——Now one of the worst counties in Ireland; general contempt of authority, *Morris* 3674, 3685-6——General absence of crime before present agitation, 3677——Distinctive features of agrarian crime in, *ib.*——Large infusion of American element, 3679-80——Prevalence of Land League organisation, *Huggard* 869.

Number of jurors on jurors' books, *Huggard* 829, 977——Number of special jurors, *Morphy* 2071——Jury panel unnecessarily large, *Neligan* 3421.

Composition of juries, *Morphy* 1978-84——Excessive proportion of farmers, *De Moleyns* 1604; *Morphy* 1978.

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Kerry—continued.

Conduct of jurors; experience favourable; unexpected cases of conviction, *Barry* 1426, 1340 —— Frequent want of intelligence; out of a population of 197,000, no less than 12,000 cannot speak a word of English, *Morphy* 2044—— Jurors excellent under old system in all cases, 2052-4 —— Conduct bad in agrarian cases, but reasonable in others, *Morris* 3656.

Qualifications stated, *Morris* 3657—— Rating generally low; 40*l.* is a high qualification, *Huggard* 972.

Instances of bad acquittals, *Neligan* 3425; *Lawson* 4040-6—— Criminal cases at quarter sessions, where tried, *Huggard* 849.

Synopsis of return of crime at Spring Assizes, 1881, *Justice Fitzgerald* 4190; *App.* C., p. 476.

Kilkenny. Rating high in parts of, *Slacke* 1032—— Quarter sessions for whole county held in city of Kilkenny, 1048—— Jury panel produced, *De Moleyns* 1640.

Favourable experience of juries in, *Corcoran* 3523—— County jurors do their business very well. *Barry* 1333 —— Jurors on the whole, since 1871, more satisfactory than elsewhere, *De Moleyns* 1641.

Kilross. Riot case at, *Bolton* 3869.

Kilrush. Better class jurors at, absorbed by grand juries, *Kelly* 3012, 3037.

King's County. Ribbon combinations in, *Molloy* 651—— Land League organisation, 653; *Mitchell* 1939—— Trial for abduction in, referred to, *Molloy* 664—— Large amount of criminal business, 712—— Inferior character of present juries, *Dowling* 3134–42.

L.

Land. Hopeless conduct of juries in any case connected with land, *Gibson* 2293, 2299, 2301; *Lawson* 4049–52.

See also *Agrarian Offences. Boycotting. Land League. Landlord and Tenant.*

Land Act, 1881. Necessity for changing jury system depends on success of Act to pacify Ireland, *Huggard* 915, 932—— Tendency of recent legislation, as shown by this Act, and the Land Act of 1870, to increase class of cases not triable by jury, *Justice Fitzgerald* 4133.

Land League. One of the vastest organisations there has ever been in Ireland; it is everywhere, *Mitchell* 1939–42; *Hamill* 1814—— The source of all crime and failures of justice, *Hamilton* 3287–8—— Has paralysed jury system, *Neligan* 3410.

Evidence respecting organisation of, in Tyrone, *Buchanan* 325—— In King's County, *Molloy* 653: *Mitchell* 1939—— In Westmeath, *ib.*; *Morris-Reade* 1073—— In Kerry; *Huggard* 869—— In Waterford, *Slacke* 1011—— In Queen's County, *Molloy* 653; *Hamilton* 1121-5—— In Limerick, *Barry* 1338–9; *Leahy* 3633–5, 3647—— In Tipperary, *Slacke* 1047, *Bolton* 3877–8—— In Roscommon, Galway, and Mayo, *Hamill* 1813—— In Cork, *De Moleyns* 1716; *Hamilton* 3311—— In South and West of Ireland generally, *Moore* 4019.

Absence of Land League agitation in Derry, *Elrington* 3786.

Effects of, on juries, *Blake* 255; *Molloy* 654, 717; *Slacke* 1013; *Hamilton* 1115; *Bolton* 3868—— House to house visitation to coerce jurymen, *Lloyd* 3189.

Its influence extends to domestic servants, *Neligan* 3410.

Connection of tenant farmers with the movement, *Slacke* 1047; *Barry* 1338–9; *Hamilton* 3278.

Many are driven to join it from intimidation, *Hamilton* 1125; *Leahy* 3633–5.

Connection of, with Ribbonism, *Morris-Reade* 1074, 1110.

Instances cited of a conviction permitted by, *Morphy* 2017-21; *Justice Fitzgerald* 4190.

See also *Boycotting.*

Landlord and Tenant. Excellent relations between landlord and tenant in Clare, from 1872 to 1878, *O'Hagan* 2176—— Good conduct of juries under old system, in cases of, *Huggard* 887.

Prisoner's right of challenge considered with reference to cases of, *Purcell* 79, 84; *Fitzgerald* 2960.

Favourable experience of juries in such cases, *Barry* 1351, 1453–5; *Morris* 3666 ——Contrary experience, *Huggard* 853; *Justice Fitzgerald* 4133.

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Report, 1881—*continued.*

Larceny Act. Summary powers of magistrates under, *Slacke* 1026-7.

Larceny Cases. Jurisdiction of local magistrates too limited in, *Blake* 2867——Expediency of extending their summary powers, *Whitney* 2694-8——Qualified concurrence in that opinion, *Hamill* 1803——Would give them jurisdiction to try all larceny cases up to 10 *l.* or 20 *l.*, *Kelly* 3051, 3091——Contrary opinion; would leave ordinary cases to come to quarter sessions, *Nelligan* 3428.

Favourable experience of conduct of juries in, as compared with other offences, *Blake* 133, 261; *Huggard* 849; *Slacke* 988; *Whelan* 1558; *Murphy* 2003; *Boyd* 2430; *Whitney* 2573; *Kelly* 3028; *Dowling* 3138; *Lloyd* 3194; *Leahy* 3615; *Lawson* 4049——Convictions are easy, for juries consider such offences disgraceful, *Bolton* 3873——Jurors only too prone to convict, even on insufficient evidence, *Hamilton* 3285——Their conduct untrustworthy of late, *Mitchell* 1913.

Preference of prisoners for summary trial in, *Hamilton* 1139, 1149.

Trial for, where relatives of accused were on the jury, *Mitchell* 1907.

See also *Summary Jurisdiction.*

Law. Paramount importance of enforcing the law, as the foundation of all good government in Ireland, *Bence Jones* 578——Recent failure in this respect; the law has been a laughing-stock, 586, 591—— Law outwitted in everything, 574.

See also *Ireland, State of.*

Feeling of antagonism to the law among jurors, *Purcell* 7, 96; *Bence Jones* 503, 510, 513; *Morris-Reade* 1051-3; *De Moleyns* 1612, 1678——This especially in small country towns, *Byrne* 799——In Crown prosecutions, *Hamilton* 1117——Jurors call crimes against the law "clean crimes," and will not convict, *Dowling* 3142-3.

Jurors have no reverence for the law; but a strong underlying feeling of reverence for justice as justice, capable, however, of being swayed by prejudice, *Blake* 236-7.

Fixed determination of jurors not to carry out the law, *Bolton* 3865——Disinclination to support it, *Blake* 235; *Mitchell* 1919.

Particular antagonism to law in agrarian cases, not as law itself, but as working an injustice, *Huggard* 948-50; quoted in Report, par. 25——His opinion concurred in, *Slacke* 1008——No experience of any case to support the proposition, *Barry* 1336.

Lawson, Right Hon. Justice. Jury Bill introduced by, as Attorney General, *App.* A., p. 472-3——Cases tried by, referred to, *Nelligan* 3425, 3431; *Moore* 3980.

(Analysis of his Evidence.)—Justice of the Court of Common Pleas in Ireland since 1869; gave evidence before the House of Commons' Committee in 1873; 4022-4.

Previous complaint of inferiority of jurors introduced by Act of 1871; this complaint not removed by Act of 1876; 4025-7.

Exceptional good conduct of jurors on North-east Circuit, save in party cases, 4027, 4121, 4105——Impossible elsewhere to get convictions for agrarian offences, 4027-9——Bad experience of juries on Munster Circuit, 4121——Cites cases of acquittals where accused was taken red-handed, 4040-4.

Experience that juries will do their duty in larceny and ordinary cases, 4049——In assault cases they are bad; they disregard the evidence, 4050——Hopeless to expect an improvement while present agitation continues, 4053, 4066.

Better-class jurors are rather coy and shy of attending; the prisoner's challenge tends to exclude them, 4031-2——Recommends greater stringency in imposing fines for non-attendance, 4039.

Change of venue important, to avoid local feeling, 4056-8——Would empower Attorney General to direct a change of venue and have a special jury, 4060, 4138-9, 4143-4

Would extend summary jurisdiction of magistrates at quarter sessions, with power to imprison for twelve months in agrarian cases, 4067-80, 4123-4, 4138——Believes this remedy would be enough for present state of things; would not recommend abolishing trial by jury altogether, 4077——Admits certain defects in this proposed remedy, but these defects, *i. e.* as to serious offences, might be covered by change of venue, 4162-6.

Objects to old system of striking juries; practice of Court of Queen's Bench in such cases, 4082-9.

Would limit prisoners' peremptory challenges to six in all, including capital, cases, *i. e.* six altogether, no matter how many prisoners; but would retain powers of Crown as they are, 4090, 4095, 4113-4, 4130-4.

Verdict by majority recommended by witness in 1873; but it would not avail now to meet the present state of things, 4096-8.

Scotch system of having one-third of common juries consist of special jurors would not

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Report, 1881—*continued.*

Lawson, Right Hon. Justice. (Analysis of his Evidence)—*continued.*

not do for Ireland, even under ordinary circumstances; it would only provoke disagreements, 4099, 4100, 4127.

Would object altogether to verdict by ballot, 4101-2——Also to empowering judge to refuse to receive improper verdicts, 4106.

Abolition of grand juries at quarter sessions would be an improvement, 4119.

Fines might be imposed more stringently on better-class jurors, 4039——But would not limit power of judge to remit at his discretion, 4135-7.

Recommendations, as above, summarised, 4138.

Objections to any special commission of judges; if a special tribunal is created, it should be one *pro hâc vice*, and not composed of judges at all, 4155-7.

Leahy, Maurice. (Analysis of his Evidence.)—Is Sessional Crown Solicitor for the county and city of Limerick, 3612——Has had considerable experience in preparing cases, as prosecutor, for the Crown, 3613.

Conduct of county jurors in civil cases very fair, 3615.

Their conduct in criminal cases very bad, except in cases of larceny and sheep-stealing, 3615——Cites instances of miscarriages of justice, 3617-24.

Experience of small prospect of conviction after a disagreement in first instance, 3625——Evidence as to canvassing jurors; suggestion to defer making panel known till morning of the sessions or assizes, 3628-30.

Preponderance of agrarian crime; terrorising influence of Land League on jurors, 3632-41——Doubts if much good would result from raising the qualification, 3643.

Superiority of city over county jurors, 3627.

Leases. Leasehold Qualification. Rarity of leaseholders at present in King's County, *Mitchell* 1947——In Ulster. *Hamilton* 3280——Many leases made at time of Reform Act, *Mitchell* 1950.

Leasehold qualification: a very unsuitable test of a juror's competency, *Fitzgerald* 2984.

The qualification introduced in civil cases in 1735, *App.* A., p. 469——Change made, as to unexpired years, in 1755, *ib.*

Leasehold qualification for civil and criminal cases under Act of 1833, *Molloy* 597; *App.* A., p. 470-1.

Statement of leasehold qualifications under Act of 1876, *Harvey* 821; *Macdonnell* 3537.

Lefroy, Chief Justice His opinion in a case cited, *Molloy* 599.

Leinster Circuit. Experience of juries on, *Gibson* 2299-2307.

Leitrim. Smallness of holdings in, *Molloy* 616——Winter assizes at, *Whitney* 2621-6.

Lewis, Sir G. Cornewall. Reference to his book on "Local Disturbances in Ireland," *App.* A., p. 470.

Limerick. Trial by jury in, described by Mr. Justice Barry as "a farce"; concurrence in this statement, *Purcell* 6-8——The statement explained, *Barry* 1335, 1347, 1368-74, 1472.

Prevalence of old faction feuds, *Purcell* 9——Very little agrarian disturbance before November 1880; good feelings previously between landlord and tenant; comparatively few cases under Land Act of 1870, *ib.* 54.

Present state of terrorism, *ib.* 63; *Leahy* 3634-43——Land League associations, *Barry* 1338-9; *Leahy* 3647.

Want of intelligence among common jurors, *Barry* 1372, 1383, 1427; *De Moleyns* 1722——Convictions hopeless in agrarian cases, bad assaults, and faction fights, *ib.* 1608, 1675; *Lawson* 4049-52——Bad experience of conduct in criminal cases generally, *Leahy* 3614-26——Unsatisfactory in civil cases; instances cited, *Barry* 1333.

Juries composed too exclusively of farmers since 1871, *De Moleyns* 1604; *Leahy* 3627——Few towns have houses of any considerable value, *De Moleyns* 1652——Specimen of panel produced, 1614, 1651.

Satisfactory progress of education in the county, *Barry* 1385-6: *Justice Fitzgerald* 4242.

Superior character of city, as compared with county jurors, *Purcell* 11, 62-63——Proposal to mix up city and county jurors in balloting for the juries, but to keep panels distinct, *Barry* 1402-3.

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Report, 1881—*continued.*

Lloyd, Clifford. (Analysis of his Evidence.)—Is Resident Magistrate at Kilmallock; acted as such from 1874 to 1877 in Down, 3176, 3217, 3219——Experience at quarter sessions in Down, Belfast, Antrim, and Longford, 3177——Was at Longford this year on special duty for three months, 3228.

Conduct of juries could not be worse, except in assault and larceny cases, 3179, 3193–4——They cannot be trusted at all in any agrarian or political cases, 3180–3, 3271.

Ascribes this misconduct to fear generally, resulting from present state of the country, and often to actual personal intimidation, not to any sympathy with crime itself, 3186–8, 3274——In ordinary criminal cases they do their duty fairly in ordinary times; but in cases of popular agitation, when the country is excited, they utterly fail, 3216.

Would proclaim certain districts, and suspend there trial by jury, 3195, 3200, 3264——Substituting trial at assizes by three judges, and at quarter sessions by chairman and two resident magistrates, 3202——But would not abolish trial by jury altogether, 3263.

Change of venue from disturbed districts would be open to objections: unfairness, for example, of having Nationalists tried by Orangemen, 3197.

Would not increase jurisdiction of local magistrates 3256——Their present powers are ample, if they had the courage, or were allowed to use them; but they are often fond of popularity and often coerced, 3204–9, 3274——They belong often to a class who are dependent on the people, 3210–11——Excepts magistrates in the north from this description, 3226.

Resident magistrates should have a limited jurisdiction in cases of riot, 3207–9——Their number is insufficient for present strain upon them, and should be increased, 3241–3——Their powers generally are sufficient, but they are hampered by the local magistrates, 3204, 3244——Their pay is inadequate, considering their duties, 3245–6——Preference for military men; would qualify those who have entered an Inn of Court and passed an examination in certain branches of law, 3244.

A local magistracy at all in Ireland is a mistake at present; both the class and duties of local magistrates have so much changed, 3248–54.

Jury system has broken down in agrarian cases, and no change in the composition of juries will cure this, 3271–2——In cases where popular feeling is excited, only the judges and resident magistrates can be trusted, 3275.

Londonderry. County jurors nearly all farmers, *Elrington* 3785——Favourable experience of their conduct, *ib.* 3784; *Barry* 1462; *Fitzgerald* 2888–95——Comparative absence of agrarian agitation, *Elrington* 3786; *Fitzgerald* 2912–3.

Longford. Unfavourable experience of juries in, *Lloyd* 3228–9.

Loughrea. Conspiracy at, *Morris-Reade* 1074, 1085–7.

Louth County. Favourable experience of juries in, *McBlaine* 2745–52; *Lawson* 4027–8.

Lowther, Right Hon. J. Memorial to, of Dublin Jurors' Association, *Edmondson* 421; *Harvey* 822——Petition to, of Waterford Jurors' Association, *ib.* 819–22.

M.

McBlaine, Frederick William. (Analysis of his Evidence.)—Has recently been Crown prosecutor for counties of Louth and Down, and extra prosecutor in the other counties on the North-eastern Circuit: was senior Crown prosecutor in Louth for twelve years, and afterwards junior Crown prosecutor in Down for sixteen years, 2741–2.

Approves thoroughly the change of system in 1871; it has worked extremely well, 2743–5——Cannot suggest any alterations, 2753.

Conduct of jurors on the whole very satisfactory, due allowance being made for existing excitement, 2746–2752——Has no experience of agrarian cases; there have been none in Down, 2748–9——Common juries under new system were awkward and inexperienced at first, but have greatly improved with training, 2753, 2758.

Large admixture of classes on juries; beneficial effects of this, 2759–63——Objects to any artificial means of infusing special jurors, as proposed by last witness; it would be invidious and unnecessary on the North-eastern Circuit, 2763–6.

Prevalence of party feeling in Armagh; no experience, however, of bad verdicts on this account, 2772–3.

Macdonnell,

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Macdonnell, James C. (Analysis of his Evidence.)—Was Sub-sheriff of County Mayo for fourteen years up to last February, 3529-30——His duty to prepare jury lists, 3531.

Alphabetical rotation works with regularity and fairness, but cannot be said to produce good jurors, 3533-5——Would raise present qualifications for the county; the 6 *l.* dwelling-house qualification in particular, 3536, 3586——Suggestion as to reducing qualification for spirit dealers in towns; the suggestion reconsidered, 3537, 3582-4.

Better class jurors absorbed by service on grand juries, 3544——Social reasons also make them averse to serve on common juries, and the right of challenge excludes them, 3545-7——Even a few would be very valuable, 3559——Suggests having one-third consist of special jurors, and calling up fresh ones to supply the place of those challenged, 3559, 3567.

Conduct of jurors very unsatisfactory in many cases, particularly in those of assaults on process-servers, forcible entry, and rescue under civil bill decrees, 3548, 3554——Bad effects of present agitation in this respect, 3560.

Rating qualification *per se* is no sure means of getting proper jurors, 3549——Knows no alternative for this but selection; but this would be a disagreeable and invidious duty, and public opinion would be against it, 3550-3——Would qualify no common juror rated below 10 *l.*; but leave special jury qualification as it is, 3580-2.

Twenty challenges are too many; the right is exercised in the fullest way to exhaust panel, 3566——Would reduce the number in felony cases to ten, and abolish all peremptory challenges in cases of misdemeanor, 3570.

Special qualifications for sons of special jurors, &c. objected to; that class, so far as they are not rated, have really no business in the country, 3568-9.

Jury lists often inaccurate; carelessness of officials in returning names already struck off on revision, 3585——Would deduct from pay for names improperly on the list, 3586-8.

In civil cases the conduct of jurors at assizes is very fair, but at quarter sessions invariably bad, 3595-3600.

Unwillingness of magistrates to perform their duties, owing to personal risks; cites instances, 3601-3.

McKenna. Case of, referred to, *Moore* 3966.

Macroon. Instanced as a place notorious for non-convictions, *Bence Jones* 504, 547.

Magistrates (Local). Favourable opinion of, as a class; no objection to, as landlords *Ferguson* 3369——They do their duty fearlessly, *Morris* 3673, 3777——Are quite above influence or pressure; their administration of justice gives general satisfaction, *Bolton* 3909, 3914.

Want of sympathy at present between them and the people, *De Moleyns* 1640——Their position not a pleasant one: they belong to a class distrusted and disliked, *Morris* 3776.

Influences brought to bear on, in country districts, *Blake* 2808; *Whitney* 2647-52——Strong feeling among peasantry of importance of influencing them before trial; instance cited, *Bence Jones* 585.——See also *Intimidation.*

Incompetence of present magistrates generally: proposal to abolish them and substitute skilled lawyers, *Blake* 2809-11, 2858-63——A local magistracy at all in Ireland is a mistake; would have none but resident magistrates, *Lloyd* 3248-50——Impression that the best magistrates do not attend; would strike off those who fail to attend a certain number of times, *Kelly* 3062.

See also *Petty Sessions. Quarter Sessions. Summary Jurisdiction.*

Maryborough Case, The. Molloy 717; *Gibson* 2419-20.

Masters' Juries. Their duties explained; instanced in support of proposal to reduce number of jury, *Edmondson* 429——Service on, being so light, should not exempt jurors from summons to other courts, *Monahan* 2266.

May, Chief Justice. Ruling of, as to right of challenge in juries struck under old system, *Gibson* 2306-24.

Mayo, County. Activity of Land League in, *Hamill* 1813; *Macdonnell* 3561-5.

Number on jury lists; tabulated analysis thereof, *Whitney* 2558-60——Intimidation of magistrates; cases cited, *Macdonnell* 3601-3.

Present county qualification approved, *Whelan* 1561——Town qualification of 6 *l.* too low; the minimum should be 10 *l.*, *Macdonnell* 3536, 3586, 3580-2.

Composition of common juries, *Whitney* 2551; *Macdonnell* 3539-41——Their conduct fairly satisfactory, except in agrarian cases, *Whitney* 2569-76——Misconduct, from want of honesty, in party cases; aggravated by Act of 1871, *Whelan* 1553-60——Conduct of late very unsatisfactory, *Macdonnell* 3548.

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Meath Special Commission, 1870. *Molloy* 637, 650, 660.

Meath County. Ribbon combinations in, *Molloy* 651.

Milton More Case, referred to, *Gibson* 2312.

Misdemeanour. Ordinary convictions for, no disqualification, *Purcell* 106–7——Old common law distinction between misdemeanour and felony now practically obsolete, *Morris* 3693; *Lawson* 4092——Satisfactory conduct of juries in ordinary cases of, *Blake* 133, 261; *Slacke* 988.

See also *Challenge.* *Larceny.* *JURIES* (*Character and Conduct*).

Mitchell, Adam. (Analysis of his Evidence.)—Has had forty-three years' experience as a practising solicitor; Sessional Crown Solicitor for fourteen years for King's County, 1895–7.

Insufficiency of jurors under the old qualification; the Act of 1871 was necessary in that respect, 1900–3.

Present jurors liable as a class to intimidation; they are chiefly small farmers, 1905, 1910——Considers them unfit to try most cases, even larceny and sheep-stealing cases latterly, 1911–3, 1960–1——This due to sympathy mainly; but the great majority are sadly wanting in intelligence, and are also disinclined to support the law, 1912, 1915, 1919–20.

Want of proper powers for dealing with cases of riot and unlawful assemblies, 1920–2——Importance of giving summary jurisdiction in such cases to magistrates, not excluding the local magistrates, 1921–7——Would keep graver offences for trial by two judges, 1937.

Change of venue alone would fail to meet present evils, owing to vastness of Land League organisation, 1938–42.

Would raise qualification considerably; this could be done, and still a sufficient supply of jurors left, 1944——The present number of jurors is more than is required, 1945.

Approves Mr. De Moleyns' suggestion to qualify sons of magistrates and members of the universities, 1953.

Molloy, Constantine. (Analysis of his Evidence.)—Is a practising barrister; called to Irish bar in 1858; joined Home Circuit in 1860; 592——A native of, and Crown Prosecutor for King's County, 593, 712——Drafted the Jury Bill of 1871, and assisted in drafting that of 1873; 594–5——Area of experience confined to six counties round Dublin, 708–9——Was a witness before House of Commons' Committee in 1873; 614, 639——Was counsel for defence in Kelly's trial, and counsel for Crown in recent State trials, 673, 680——Deputy Chairman of Limerick Quarter Sessions, during illness of Chairman, 681——Hands in Memorandum on Irish Jury Laws and Statistics of Crime, &c., *App.* A., pp. 469–75.

States circumstances leading to legislation of 1871; 597–600——The Act has greatly improved the juries on the Home Circuit, 602–3——Approves raising of qualification by Act of 1873; 615.

Unsatisfactory acquittals in assault cases; ascribes them to a rough and ready desire to do justice rather than to prejudice against the law, 622——Believes juries often acquit from fear of a severe sentence following conviction, 682.

Is satisfied on the whole with present jury system; what complaints exist, applied also to the old, 629, 656——There is a reasonable certainty of conviction, even in agrarian cases, 707–16.

Recommends more careful examination of panel, and full exercise of powers by Crown to exclude improper jurors, 629–35——Would have a larger panel summoned, to counteract abuse of challenge, *ib.*——Approves Scotch system of requiring a proportion of special jurors on common juries, 639–41——Would require one-half to be special jurors, and divide proportionately the number of challenges, 649.

Alphabetical rotation approved, 642–3, 659——The old system of selection was much complained of, 658.

Fines for non-attendance of jurors not frequently enforced, 676——Would postpone fining till the juror is called to be sworn, *ib.*

Favourable experience of Dublin jurors, 668——Their duties are onerous; proposal to relieve attendance at Commission Courts in Queen-street, 679——Approves of uniting the city and county panels, 688, 698–701.

Peremptory challenges indispensable in cases of felony; but might be reduced to twelve or fourteen, except in capital felonies, 637, 694–6.

Monaghan (County and City). Large proportion of farming element on juries, *McBlaine* 2768——Trial at assizes, in which improper panel was quashed, *Molloy* 611–2——Agrarian cases from, tried at Antrim, *Bottomley* 1317–8——Reference to trials in, *ib.* 1320; *Barry* 1501, 1506——Favourable experience of county jurors, *Lawson* 4027–8.

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Monahan, Lord Chief Justice. Anecdote of his rebuking a juror for dissenting, who dissented in support of judge, *Barry* 1353.

Monahan, Henry James. (Analysis of his Evidence.)—Permanent Registrar since 1864 of the (late) Consolidated Nisi Prius Court at Dublin; was registrar to his father, the Chief Justice, after 1853; 2236-7——His experience confined to civil cases, 2240.

Jury Procedure Act of 1876 defective, as regards re-summoning jurors; sheriff having to summon non-existent jurors, owing to deaths and changes of domicile; better not to re-summon at all, 2242–4——Suggests a quarterly revision of jury lists, *ib.*

Defective provision of Act of 1876, as regards right of challenge with special juries struck under old system, 2245-52.

Approves the abolition of sheriffs' power of selection, 2255——Objects to alphabetical rotation; it compels falling back on the more numerously represented letters, 2256–8——Prefers balloting out a jury from jurors' book, putting aside those balloted each time, 2259, 2269.

Number of exemptions should be increased; would extend them to domestic servants, railway guards, and attorneys' clerks, on the ground of inconvenience of attendance, 2260, 2262——Practice of letting off coachmen and bank managers on this ground, 2261, 2263.

Favourable experience of Dublin juries; great improvement since 1871; 2241, 2253——Their service is unevenly divided; would amalgamate city and county lists, 2266, 2270.

Approves Mr. Byrne's plan of self-acting revision of jury lists, 2267–8 (compare *Byrne* 805).

Consolidation of the eight Jury Acts much required, 2270.

Would empower judge to find a verdict in undefended causes, as a remedy for bad attendance of juries, 2271.

Montgomery Trial, The, in Tyrone, *Buchanan* 356–7: *Barry* 1463–9; *Moore* 3981, 3999–4001; *Lawson* 4114; *Justice Fitzgerald* 4247.

Moore. Conviction of, for murder; the case referred to, *Molloy* 665–7.

Moore, Cecil. (Analysis of his Evidence.)—Is Registrar in the Court of Common Pleas in Dublin; was a practising solicitor for thirty-four years in the county, 3960 ——Was Sessional Crown Solicitor of County Tyrone for eighteen years, and acted as sub-sheriff and Clerk of the Crown, 3961——Came to Dublin in 1876; 4014.

Act of 1871 has worked remarkably well in Tyrone, but is capable of amendment, 3963 —— Importance, to wit, of an improved revision of jury lists, compelling collectors to be more strict in their returns, 3969–74——Expediency also of increasing the qualification slightly in some counties, and largely in others, 3970, 3975——Would raise it generally as high as is consistent with obtaining proper supply of jurors, 3976 ——Considers number of jurors in Tyrone at present unnecessarily large, 3979, 3988.

Doubts desirability of mixing special jurors on common juries; it would probably lead to jealousy and discord, 3980, 3982.

Recommends, with Mr. Elrington, giving power to judge to certify for a new trial in cases of perverse verdicts, 3980.

Objects altogether to abolishing trial by jury, 3980——But would increase number of jury in Crown cases to fifteen, and let twelve find a verdict, 3981.

Alphabetical system of rotation inconvenient, from disproportionate number of names under certain letters; the letter M an example, 3988——Would divide the lists into pages of twenty-five names, and take first name on each page consecutively, 3989–93.

Evidence as to conduct of jurors in party cases; these cases have grown out lately in Tyrone, 3994–8——Experience of Dublin juries, 4007–9.

Would empower Attorney General to change venue when he thought proper, 4009 ——Recommends a change from the southern to the northern counties in political and agrarian cases; this is necessary to avoid Land League influence, 4015–19.

Moroney, Mr. His prompt exercise of jurisdiction as resident magistrate: salutary effects thereof, *Whitney* 2711–4.

Morphy, Alexander. (Analysis of his Evidence.)—Crown Solicitor, for last twenty years, for Kerry and Clare; gave evidence before the House of Commons' Committee in 1873; 1965, 1967.

Sheriffs' old power of selection never abused; but impossible now, however desirable, to revert to it, 1970–2.

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Report, 1881—*continued.*

Morphy, Alexander. (Analysis of his Evidence)—*continued.*

Complete failure of justice in nearly all cases of outrage against the person and agrarian cases, 1973, 2004, 2017, 2077-9——Not so in cases where property is concerned, 2003 —— Misconduct mainly due to fear; canvassing is universal, 2005, 2022-3.

Insufficiency of present rating qualification to secure satisfactory class of jurors, 1977.

Higher class jurors shirk service; naturally so, from annoyance, 1987-8, 2113——They are largely excluded by right of challenge, 1999——Advantage of having even a few on jury, 2007——Fines fail to ensure their attendance, 1989——Practice of remitting statutory fine, if enough jurors are afterwards got, as almost always happens, 1995-6——Opinion that the fine is mandatory, 1998.

Would put qualification for Crown Court jurors at what it is now for special jurors, and limit their duties to trial of criminal cases at assizes, 2013——Would make them a special jury for such cases; the panel to include grand jurors, gentleman farmers, &c., 2031, 2056, 2069-70. 2098

Would have a special qualification for sons of magistrates, sons of clergymen, retired naval and military officers, and militia officers, when not actually engaged in training, 2013, 2120-2.

Power of Crown to order jurors to stand by does not practically prevent failures of justice; juries are so bad throughout, 2025-6, 2101——The power is never exercised capriciously, 2100, 2107.

Grand juries unnecessary in criminal cases; would abolish them both at assizes and quarter sessions, 2033.

Peremptory challenges should be abolished; they are always abused and emasculate the panel, 2104-5.

Would extend summary jurisdiction of magistrates at petty sessions, to include assaults endangering life and Boycotting, 2037-41, 2085, 2117.

Favourable experience of juries under old system in all classes of cases, 2052-4.

Would submit all criminal cases at quarter sessions to Attorney General, to decide as to sending them to assizes, 2059-60, 2073-4.

Difficulty of getting evidence, especially of identification; witnesses can be got, but are too reticent when obtained, 2088-92.

Verdict by majority objected to; it would simply lead to an acquittal; the only thing to do is to modify constitution of the jury, 2109-10.

Morris, Lord Chief Justice. Case tried by, referred to, *Barry* 1501, 1506.

Morris, William O'Connor. (Analysis of his Evidence.)—Is Chairman of quarter sessions and County Court Judge of Kerry; has been four years in Kerry, and nearly six years in county Louth previously, 3650-1.

Doubts whether system of 1871 should be adopted, if the matter were a *res integra*; impossible, however, now to recede from the change, 3652——Moreover, the old tenure qualifications had practically become nearly obsolete, 3652——Also the sheriffs' former powers of selection were objectionable, not as having been abused, but as having been suspected, *ib.*

Present conduct of juries in ordinary cases reasonable, but hopeless since summer of 1880, in agrarian cases, 3653-6, 3675——Difficulty of conviction in cases of faction fights, and assaults on process-servers and officers of justice, 3656, 3676——No mere modification of jury system will suffice under present circumstances to meet such cases, 3756——Either the venue must be changed or trial by jury temporarily suspended, 3665.

Impression that raising qualification would not make much difference in quality of juries, 3658——Possible advantage of having special qualifications, as a leaven, those under Act of 1876 being far too few, 3657-8.

Better class jurors excluded to some extent by right of challenge, 3661——Desirable to have more of them as an experiment; but will not say it would have a decided effect, 3658-9, 3752.

Change of venue recommended in agrarian cases, but only as a palliative; would empower Attorney General to change it; or perhaps to call for a special jury in such cases, 3663-7, 3708, 3714, 3735-41.

Unpopularity of civil magistrates as a class, 3776——Would give them larger jurisdiction, especially in cases of riot, forcible possession, and aggravated assaults, 3668-9, 3725——Would try this as a remedy first of all, 3715——The increase of jurisdiction should apply to all magistrates, without any invidious distinction between resident and local, 3726, 3772-5.

Would

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Report, 1881—*continued.*

Morris, William O'Connor. (Analysis of his Evidence)—*continued.*

Would increase number of resident magistrates, and enlarge their powers, 3668, 3726, 3742, 3767-71——They do their duty very well, 3776——Doubts if lawyers make the best ones; they should be taken from no particular class, 3778.

Challenges not much exercised on either side, 3691-2——Approves the six challenges in misdemeanour cases, 3693——Would be inclined to have only challenges for cause, but for difficulty of having to restrict, in that case, the rights of the Crown, 3694, 3730——Would have the judge, not the triers. decide the sufficiency of cause, 3695——Doubts if reducing number of peremptory challenges would make much difference, in present state of the country, 3727.

Abolishing grand juries would be a slight improvement, but a great innovation, and would have to be extended to England, 3698-3700.

Disapproves suggestion to empower quarter sessions to commit in certain cases for contempt of Court; this power should be exercised very sparingly, 3704-6.

Ascribes failures of justices generally to misconduct of juries, not to any want of evidence, 3719-20.

If all palliatives fail, would have special commissions of judges for agrarian cases in disturbed districts, *i.e.* three judges of the superior courts only, 3715, 3723——But this only as an ultimate resort, *ib.*

Mountmorres, Lord. Murder of, *Kelly* 3118.

Mulvey. Murder of, by M'Gratb; the case referred to, *Bolton* 3847.

Munster Circuit. Experience of juries on, *Barry* 1377-8, 1419, 1453; *Whelan* 1581-2; *Lawson* 4048, 4116, 4121.

Murder. Difficulty of obtaining evidence in cases of, *Boyd* 2492——Practice of leaving alternative of manslaughter open to juries in order to secure conviction, *Gibson* 2390——Convictions for, *Molloy* 669-75; *Corcoran* 3514; *Moore* 3966——Instance of two disagreements in a case of, *Bottomley* 1320——Instances of magistrates being murdered for their action in Court, *Kelly* 3115-8——Wrongful acquittal for, *Bolton* 3847.

N.

Napier, Sir Joseph. Opinion of, in regard to right of peremptory challenge for felonies, *Hamill* 1822.

Neligan, John Chute, Q.C. Remarks of, to juries on improper verdicts, *Mitchell* 1916.

(Analysis of his Evidence.)—Is Chairman of Meath, Westmeath, King's County, and Longford; before that was in Leitrim, and before that in Louth, 3406——Was appointed Chairman in 1866, and has held the four counties since 1878; 3407.

Act of 1871 worked fairly till present agitation, 3409, 3480——Since then the jury system has utterly broken down, 3409-11——Suggests palliatives (3411-25), but these will not cure the present state of things, 3425.

Would raise rating qualification to 15 *l.*, to exclude the poorest jurors, who are utterly incompetent, and to secure more independence; this would still leave enough jurors, though with more service, 3412-5.

Grand juries unnecessary since appointment of public prosecutor, and abolition of selection by sheriff, 3416-7——Would abolish them at sessions, as absorbing too many from common juries, 3417-8——Would keep them at assizes, though their duties there are almost formal, and their investigations very imperfect, 3465-75, 3485——If abolished at assizes, would substitute *fiat* of Attorney General for bills, 3466, 3486.

Challenge always abused by prisoner to exclude respectable jurors, 3419——Would be inclined to restrict the right, 3420-1, 3448——More satisfactory to have only challenges for cause, 3420——States legal grounds of challenge for cause; they are quite fair, 3454——Prefers leaving question to judge instead of to triers, 3455-8.

Fines should be made compulsory, to secure better class jurors; a graduated scale proposed, 3422-4——Objects to reserving such jurors for assizes, at expense of quarter sessions, 3507-9.

Cites cases of flagraut acquittals; ascribes them rather to terror rather than sympathy, 3425-6——Would empower judge, under existing circumstances, to decline to receive iniquitous verdicts, 3488-90.

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Neligan, John Chute, Q.C. (Analysis of his Evidence)—continued.

Summary jurisdiction should be given to quarter sessions, as at petty sessions; certainly in all cases of contempt of court, such as intimidation of process-servers, 3426–7, 3477–9——Would give summary powers to local magistrates in cases of riot, with power to imprison up to six months, 3432–3.

Would have trial by jury in ordinary cases as it is, 3429——Difficult to suspend it in serious cases at quarter sessions, the question being whom to associate with the Chairman, *ib.*——Absolutely necessary to do so at assizes; sees no help for it, 3430, 3459–61——Would have Executive Government, not Attorney General suspend it, but temporarily and only in certain districts, 3441–2, 3464, 3482——Would substitute a special court of two or three judges, 3496——Approves empowering Attorney General to remove cases to this tribunal, as preferable to motions in Queen's Bench, 3498–9.

Change of venue useless at present, unless disturbing influences are removed, 3446——A change from south to north would probably do good, but the good would be dearly purchased, *ib.*

Exemptions, as at present, approved of; does not know of any that he would reduce, 3451.

Would object to special qualifications for sons of special jurors, &c., few of such young men stay at home to be available, and those who do would not much improve the panel, 3449——Cannot suggest any approvable "fancy" qualification, 3450.

Nenagh. Cases at assizes referred to, *Bolton*, 3858–64.

New Pallas. Prevalence of old faction feuds at, *Purcell* 9, 54——Difficulty of getting convictions in crimes of violence, *ib.* 95——The district now in a frightful state; case of outrage cited, *Leahy* 3621–3.

North-East Circuit. Composition of juries on, *M'Blaine* 2760——Their conduct approved, *Justice Lawson* 4027, 4121.

North-West Circuit. Favourable experience of juries, *Justice Fitzgerald* 4186.

"*Not Proven*," *Verdict of.* See *Verdict.*

Number of Jury. Twelve jurors too many for proper discussion and deliberation, *Byrne* 742, 758; *Hamilton* 3282——Proposed jury of three; the judge to have two votes, and majority to fix verdict, *Byrne* 753——Considers three too few, but would reduce number to seven, five to carry the verdict, *Harvey* 823.

Reduction to nine, or even six, recommended, to diminish number of jurors required, *Kelly*, Note to Evidence, *ad fin.*——Advantages of reducing to six, *Hamilton* 3282, 3299.

No reason, antiquarian or otherwise, for having twelve jurors; a reduction desirable to save inconveniences of attendance, and to enable qualification to be raised, *Justice Fitzgerald* 4221–4——Eight jurors would be quite enough for all cases, civil and criminal; but with unanimity, *ib.*

O.

Oath of Jurors. Present form of oath objected to, as antiquated and not understood; would explain "evidence" by adding "as solely defined by the judge," *Boyd* 2527–32——Advantage of having it as simple and strong as possible, *Ferguson* 3393, 3395——Simplifying it no doubt useful to remove ground of excuses; but jurors probably understand it well enough, *Neligan* 3491——It is simple enough for their consciences; they perfectly understand their duties, *Justice Fitzgerald* 4277–9.

Want of respect for, *Mitchell* 1917——Contrary experience, *Boyd* 2528——Question of jurors satisfying their oath by finding no verdict at all, *Ferguson* 3394——Believes that is so, *Justice Fitzgerald* 4280.

Proposal to bind common jurors, like special jurors, to secresy, *Boyd* 2532–3.

O'Brien, Mr. Justice. Case of Boycotting, tried by, *Corcoran* 3513.

O'Brien, Robert Vere. (Analysis of his Evidence.)—Clerk of the Peace since 1862 for County Clare; till 1872 his duties were performed by deputy, 2185–6.

Common jurors good as a class, and sufficiently intelligent, 2196–7——Since qualification was raised up to the last year or so, they have performed their duties very well, 2187.

In

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O'Brien, Robert Vere. (Analysis of his Evidence)—*continued.*

In agrarian cases convictions now are hopeless, 2194——This arises from fear, as a rule, rather than sympathy; intimidation is the main evil at present, 2195-6, 2213-4, 2227.

In assault cases jurors do their duty very fairly, 2210-2——The jury system works well enough in cases where the jury is indifferent; but has quite broken down in agrarian cases, 2208-16.

Change of venue recommended in agrarian cases, *i.e*, to Dublin, Belfast, or Cork; the first preferred, 2215, 2222-5, 2234-5——Failing this, approves of a commission of two judges for such cases, and for proclaimed or disturbed districts, but not with powers of capital punishment, 2216-20.

Alphabetical rotation inconvenient from great preponderance of names under certain letters; the last Clare panel an example, 2198-2204——Surprised at not having heard this complained of, 2200.

O'Connell's Trial. Challenge in, *Barry* 1505——Referenee to, in connection with old system of selection, *Morris* 3652.

O'Hagan, Serjeant. (Analysis of his Evidence.)—Was Chairman of county Clare from 1872 to 1878; since resigned, and practises in Court of Chancery; had been previously in Westmeath and Leitrim, 2123-6, 2141——Experienee of working of Aet of 1871 limited to six years in Clare, 2137.

Satisfied, on the whole, with conduet of common juries, 2127-8——They were awkward at first, under new system, but docile, and so improved, 2128——Convictions, however, were difficult in cases of violence, like faction fights, *ib.*

Change of venue the real remedy for present exceptional state of things, 2144——Does not think that any fancy qualifications will counteract effects of terror or sympathy, *ib.*

Petty sessions clerks, as a rule, not up to their work, 2153-4——The system, as regards pay and appointment, wants revision, 2154-64.

Injurious effects of Ribbonism on Westmeath juries, 2165-70.

Peremptory challenges might be reduced with advantage to ten, but not for any offence involving penal servitude for life, 2171-3.

Grand juries should be abolished at quarter sessions; abolition at assizes is a larger question, and might be difficult, owing to fiscal and other business, 2173-5.

Approves extending summary jurisdiction of local magistrates to some extent, 2150, 2180——But they much too seldom exercise the powers they have, 2150, 2180-3.

Rating qualification, as raised in 1876, improved juries; raising it further would be of no use at present, though the system works well enough in ordinary times, 2177-8.

Concurs fully in expediency of speedy and certain punishment, however light, 2183.

O'Leary, Vagan. Trial of, for Fenianism, *Dowling* 3135.

O'Loghlen, Sir Michael. Rules issued by, as Attorney General, respecting exercise of challenge by Crown, *App.* 471.

Ormsby, Mr. Justice. Case tried by, *Corcoran* 3513.

P.

Packing of Juries. How said to have been done; an impossibility with ballotting, *Barry* 1329.

Panel. How prepared, *Bottomley* 1156; *Neligan* 3504; *Macdonnell* 3532——Process of empannelling jury described, *Boyd* 2448.

Evidence as to exclusion of unfit jurors, *Purcell* 15; *Blake* 159; *Bottomley* 1178, 1182-6, 1272: *Barry* 1329; *Gibson* 2402.

Calling over of, *Purcell* 32; *Molloy* 637; *Boyd* 2443; *Fitzgerald* 2966-70; *Kelly* 3017; *Neligan* 3423.

Advantage of having smaller panels, to secure greater probability of due proportion of better jurors, *Blake* 144-6, 277-8.

Addendum to, recommended, as a means of drawing attention to absent jurors, *Edmondson* 434.

Errors in, arising from death or removal, *Edmondson* 467; *Boyd* 2443; *Moore* 4002-6——Case of a panel being quashed for being improperly made out, *Molloy* 612——Suggestion to make Sheriff send the panel before trial to Collector General for correction, *Byrne* 805——The suggestion approved, *Monahan* 2267-8.

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Panel—continued.

Amalgamation of county and city panels, *Molloy* 679, 688, 698–9; *Bottomley* 1257; *Barry* 1402, 1418; *De Moleyns* 1632.

At assizes, compared with quarter sessions, *De Moleyns* 1624.

Importance of having larger panels summoned at assizes, to counteract abuse of challenge, *Molloy* 637——Practice of Sheriff to summon large panel with that object, *Bolton* 3957——Instance of whole panel being challenged, *Barry* 1498.

Proposal to insist on nine-tenths of the panel being present, before allowing trial to proceed, *Kelly* 3077.

Particular panels referred to, *De Moleyns* 1614; *Morphy* 1981–4, 2095; *Whitney* 2677; *Fitzgerald* 2893, 2901–4, 2943–55; *Kelly* 3011, 3083–7; *Lloyd* 3191; *Macdonnell* 3571–5; *Morris* 3683; *Bolton* 3865, 3877, 3885.

Statement as to early modes of impannelling juries, *App.* A., p. 470.

See also *Alphabetical Rotation. Challenges. Fines.* JURIES (*Composition and Quality*). *Jury Lists. Jurors' Book. Sheriff. Summoning of Jurors.*

Parliamentary Vote. Qualification for, no analogy to case of jurors, *Barry* 1405.

Party Cases. In Londonderry, are the chief difficulty of the jury system, but have diminished lately; such cases are triable, but not usually tried at quarter sessions, *Elrington* 3788, 3832–7.

In Tyrone: have greatly grown out; jurors not always reliable in, when tried, *Moore*, 3994–8.

In Armagh: jurors much swayed by prejudice; a question of Orange against Green, *Whelan* 1530, 1563–4, 1570——Tendency of juries to make every case a party case, *Barry* 1347——The county is the stronghold of party; but bad verdicts comparatively few, except in strong cases, *McBlaine* 2773——Instance of an honest verdict in an extreme case, *ib.* 2754.

Misconduct of jury in a sheep stealing case explained by party feeling, *Mitchell* 1960–1.

Party procession cases in Down, *McBlaine* 2747–56.

Difficulty of getting evidence; this from sympathy rather than fear, *Whelan* 1593–4, 1597.

On North-east Circuit: conduct of jurors unreliable, but improved of late; some very good verdicts known, *Lawson* 4105.

On North-west Circuit: instance of non-conviction in an Orange case; such cases can never be cured, *Justice Fitzgerald* 4186.

Payment of Jurors. Scale of payment for Dublin and London juries compared; proposed increase for Dublin juries, *Edmondson* 421–8——"Guinea-pig" jurors in Dublin; common jurors known to serve for the sake of the 1 *s.* 9 *d.* a day, *Molloy*, 603–9.

Reasonableness of extra payment for low class jurors, who come from long distances, *Harvey* 813, 818.

See also *Distant Jurors.*

Perrin, Mr. Justice. Rules issued by, when Attorney General, as to exercise by Crown of right to order jurors to stand by, *App.* A., *p.* 471.

PETTY SESSIONS:

(*Magistrates at.*)—Satisfactory administration of justice by, *Hamilton* 1137–8; *Mitchell* 1927; *Morphy* 2041; *Bolton* 3909, 3914.

Non-attendance of the best magistrates complained of; would strike off for continued default, *Kelly* 3062——Deterrent effects of present agitation in this respect, *Whitney* 2728–30.

Mistaken ideas of, as to sending cases for trial, *Kelly* 3057, 3060, 3113; *Dowling* 3148–50——Instructions issued to, in this respect, *Boyd* 2457; *Neligan* 3428; *Justice Fitzgerald* 4209.

See also *Appeals. Quarter Sessions. Summary Jurisdiction.*

(*Clerks of.*)—Unequal as a rule to their work; the system, as to pay and appointment, wants revision, *O'Hagan* 2154–64.

Are of assistance to magistrates, from familiarity with the Acts, *Whitney* 2740.

Not solicitors, as in England; an inferior class and badly paid, *Justice Fitzgerald* 4273——Are ministerial officers in a very small way, *ib.* 4274——Usually sons of country gentlemen, or of national school teacher class; the pay too small to attract solicitors, *Whitney* 2731–4——Their pay in Mayo is about 120 *l.*, partly from small fees, partly by salary, *ib.* 2735–9.

Complaint of their frequently drawing convictions not in proper form, *O'Hagan* 2153.

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Petty Sessions Act, 1851. Provisions of, with reference to Appeals to Quarter Sessions, *Boyd* 2468.

Phelan's Case. See *Boyd, Mr.*

Phœnix Conspiracy. Failures of justice during time of, *Huggard* 886.

Pigott, Lord Chief Baron. Murder case tried by, *Corcoran* 3514.

Plea of Guilty. Practice of discharging prisoners on their own recognizances, on their pleading guilty; the practice complained of, in riot cases; alleged intervention of priests; action of Crown prosecutor condemned, *Bence Jones* 515-38——Denial of any such intervention, the practice is regular, and is often a wise exercise of discretion, *Huggard* 981.

The practice defended, in cases of forcible possession, where possession was given up during assizes, *Justice Barry* 1344–5——It verges close on a failure of justice, but is often necessary in agrarian cases, from hopelessness of expecting a verdict, *Fitzgerald* 2912, 2922–35——It is unavoidable often, even in flagrant cases, for that reason, *Lloyd* 3191.

The practice resorted to at Cork winter assizes; such a compromise is highly objectionable, *Justice Fitzgerald* 4190.

Opinion of Committee, with regard to the practice, that it is difficult to conceive a more complete frustration of justice, or one more calculated to demoralise society, *Rep.* par. 17.

Police. Difficulty of obtaining convictions for assaults on, *Purcell* 7; *Slacke* 988–9; *Morris* 3656, 3676, 3756; *Leahy* 3614——If actively engaged in a case, an acquittal is sure to follow, *Bence Jones* 502, 552.

Instance of a jury doing their duty by acquitting a police constable, *Huggard* 880–1.

Not enough supported by local magistrates when they report cases; they are snubbed, and so grow faint-hearted, *Lloyd* 3241.

Suggestion to entrust sub-inspector with duty of making out jury lists, but with extra pay, *Blake* 269–272.

Constabulary officers a highly meritorious body, and competent in many cases to be resident magistrates, *Bolton* 3904.

Political Cases. Aversion of better class jurors to serve in, *Byrne* 767——Preference of prisoners for trial by jury in, *Hamilton* 1139.

Failure of present system in, from refusal of juries to convict, *Blake* 131; *Slacke* 988–9; *Lloyd* 3180–3——Unanimous verdicts almost hopeless at present in Dublin, *Byrne* 774.

Sheriff's former powers of selection much complained of in important cases, *Purcell* 24. See also *State Trials.*

Poor Rate Collectors. Duties of returning jury lists in first instance to clerks of the union, *Buchanan* 370-2; *Bottomley* 1166, 1230–1——How paid for this, *Buchanan* 371; *Bottomley* 1237–8.

Carelessness of, in making those returns, *Whitney* 2565; *Bottomley* 1165, 1227–9; *Macdonnell* 3585; *Moore* 3968–9.

Need of more investigation by, as to condition of persons exempted or disqualified, *Harvey*, 818, 821——Disbelief in complaints by, as to difficulty of getting information, *Macdonnell* 3589–91.

Proposal to deduct from pay for names improperly on lists, *Bottomley* 1321; *Macdonnell* 3586–8——Fines suggested, *Whelan* 1574.

Portadown. Juries in, satisfactory except in party cases, *Whelan* 1562–5.

"*Pressure*" on jurors, distinguished from actual intimidation, *Bence Jones* 557–64.

Private Prosecutors. Abolition of their right to order jurors to stand by, *App.* A. p. 473.

Privy Council. Power of, with reference to abolishing criminal sessions except at assizes, *Kelly* 3097.

Process Servers. Cases of assault on, *Hamill* 1840; *Mitchell* 1927; *Morris* 3653; *Bolton* 3869; *Macdonnell* 3609–11——Unsatisfactory conduct of juries in such cases, *Macdonnell* 3548, 3554; *Morris* 3676.

Difficulty of getting persons to serve processes, *Hamill* 1840——Dismissal of officer for refusing to serve processes, *Morris* 3676.

Proposal to deal summarily with intimidation of process servers, as contempt of court, *Neligan* 3427, 3477, 3513——The proposal objected to, *Morris* 3704-6.

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Protection to Life and Property Act. Salutary effects of, in Westmeath, *Morris-Reade* 1097–9, 1104, 1107.

Protestants. Proportion of, to Roman Catholics on jury lists in Tyrone, *Buchanan* 373——In Dublin, *Byrne* 802–5.——See also *Religious Differences.*

Publicans. Unfitness of, as special jurors, in Belfast, *Bottomley* 1206——Unfit to be jurors at all, from their fear of losing custom, *Whelan* 1550–2.

The 15 *l.* qualification for, in towns, is far too low; should be raised to 30 *l.*, *Whelan* 1532, 1541–4——Suggestion to lower the qualification to 10 *l.*; the suggestion re-considered, *Macdonnell* 3538, 3582–4.

Proposal to disqualify all publicans rated under 25 *l.*, *Hamill* 1784–5——Would disqualify all publicans, however highly rated, *Kelly* 3005.

Punishment. Promptness and certainty of, more important than severity, *Bence Jones* 576, 579, 589; *Hamill* 1803, 1890; *Gibson* 2349–50; *Blake* 2864–6; *Neligan* 3433; *Lawson* 4158; *Justice Fitzgerald* 4208.

Beneficial effects of light penalties, if certain to be imposed, *Morphy* 2118; *O'Hagan* 2183.

Juries apt to acquit, from fear of a severe sentence following conviction, *Molloy* 634; *Ferguson* 3368.

Question of punishment less important than that of making people appear and answer charges promptly, *Lloyd* 3207–8, 3258.

Purcell, Theobald. (Analysis of his Evidence.)—Chairman, since 1874, of the County and City of Limerick, 1, 52——Previously was counsel for prisoners, and then Crown prosecutor, 2, 58–9.

Concurs in Mr. Justice Barry's description of trial by jury in Limerick as a "farce" at present, 6——This applies certainly to all political cases, agrarian offences, and crimes of violence generally, 7–9——Limerick city jurors excepted, 10, 62——In cases affecting property the juries are satisfactory enough, 42.

Failure of higher qualification to improve class of jurors, 12——No further increase would make much difference, and would make it difficult to get enough jurors, 13–14.

Power of Crown to order jurors to stand by is frequently exercised, but apparently without success, 15.

Right of challenge; very often nearly exhausts the panel, 19–20——And is habitually exercised against better class jurors, 37——Limiting it would certainly be unpopular, and of doubtful advantage at present, 46–8——Question of having only challenges for cause, considered; reasonable perhaps, but difficult, 77–9——Practice stated as to duties of triers; objections to throwing their duties upon the judge, 85–93.

Revision of jury lists insufficient at present to exclude improper jurors, 22——Impossible, however, to revert to old system of selection, 24, 60——Objections to any special court of revision, with power to exclude on account of character or presumed sympathies, 102–5——A juror might be fit for some cases, but not for others, 113–4.

Better class jurors avoid service on common juries; they feel they are powerless, being so few, 28——Treble the present fine would not secure them, 31——They attend well on grand juries, 34.

Special qualifications under Act of 1876 have not had much effect, 26–7.

Jury system worked badly in Limerick before the present agitation, 8, 52–61, 95, 122——Canvassing of jurors is a matter of notoriety, 41, 65——No mere alteration of the jury laws will now suffice, 43.

Only remedy for this paralysis of criminal justice is a temporary suspension of trial by jury in certain cases, viz., political, agrarian, assaults on police, and cases of aggravated violence, 43, 50–1, 119——Would have these cases tried at quarter sessions by chairman and two resident magistrates, and at assizes by two judges, 43——Qualifies this suggestion by proposing to empower Attorney General to direct such cases to be tried, when necessary, in the manner stated, 57, 120

Prevalence of old faction feuds in Limerick, 54——Organised character of these factions, 65.

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Disqualifications

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1. *As to a Rating Qualification generally.*
2. *As to present Rating Qualifications.*
3. *As to Expediency of further Revision.*

1. *As to a Rating Qualification generally:*

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Preferable to old system of selection, provided the qualification is sufficient, *Whitney* 2546-8.

The only feasible one at present, *Hamilton* 3279——No alternative known but selection, *Macdonnell* 3550.

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2. *As to present Rating Qualifications:*

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Paucity

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RATING QUALIFICATION—continued.

2. *As to present Rating Qualifications*—continued.

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(*In respect of Lands, &c.*)—The 40 *l.* rating admittedly a high one, *Byrne* 796; *Huggard* 972; *Buchanan* 319——It means that possibly the rent averages about 50 *l.* a year, *ib.*

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(*In respect of House Property.*)—Considered as a town qualification only, *Whelan* 1547-9; *Whitney* 2609-17——Reductions under Act of 1876, *Huggard* 961-3; *Bottomley* 1162; *Whelan* 1532-4——Inequality as between towns and counties, *Byrne* 799-800.

The 10 *l.* standard too low, *Harvey* 813; *Huggard* 963——Approved of, for Donegal, *Fitzgerald* 2898.

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3. *As to Expediency of further Revision.*

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Further raising of qualification desirable, as a means of improving juries, *Byrne* 760-1, 795-7, 801; *Morris-Reade* 1058; *Slacke* 1000, 1032; *Hamilton* 1146-7; *Hamill* 1779; *Whitney* 2654-8; *Kelly* 3005; *Bolton* 3883-90; *Justice Lawson* 4120.

Probability of more intelligence and independence the higher it is raised, *Huggard* 963; *Bottomley* 1192; *Hamill* 1858; *Morphy* 2012; *Nehgan* 3413; *Gibson* 2371.

Further raising recommended with a view to induce better class jurors to attend, *Byrne* 760——To exclude poorer class jurors, *Neligan* 3412——Solely to reduce number on jury lists, *Blake* 144-7, 277-9.

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Doubts as to a higher qualification being a remedy for general want of moral principle among juries, *Bence Jones* 505——Similar opinion; want of moral courage is not limited to any particular qualification. *Blake* 140——Disbelief in a higher qualification counteracting present system of intimidation, *Leahy* 3643.

Doubtful prospect of securing better jurors generally, by merely raising the qualification, *De Moleyns* 1607——Not so at once, perhaps, but probably after a time, *Mitchell* 1935——Impression that a change would make little difference in this respect, *Morris* 3658——It would not ensure righteous verdicts in all cases, *Hamilton* 1124-5.

Probable difficulty of obtaining enough jurors if the qualification is much raised, *Purcell* 14; *Bottomley* 1193; *De Moleyns* 1638; *Buchanan* 321; *Hamilton* 1124; *Whitney* 2558; *Hamilton* 3281; *Ferguson* 3388——This difficulty is the only objection to raising it, *Justice Fitzgerald* 4173——Operation of Act of 1876 in this respect, *Buchanan* 321-2——The difficulty would only apply to quarter sessions, and there jurors could be drawn from neighbouring districts, *Huggard* 975.

Disbelief in a higher qualification preventing an adequate supply of jurors, *Morris-Reade* 1059-61; *Mitchell* 1943; *Kelly* 3005; *Hamill* 1779-80; *Byrne* 797——Quite enough would be left, if present state of things terminated, *Huggard* 964, 972——Enough would be left, though with more onerous duties; but advantages of securing a fair trial outweigh this objection, *Neligan* 3415.

Importance of varying the qualification according to richness or poorness of a county, *Barry* 1409-11; *Moore* 3970——Would adjust the qualification according to require-

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3. *As to expediency of further Revision*—continued.

ments of each county, in respect of number of jurors, *Bolton* 3891——Principle of variation exists at present; objects to a lesser standard to enable sufficient supply of jurors; a uniform standard preferred, *Justice Fitzgerald* 4175.

Proposal to have a rateable qualification of 100 *l.* a year in large counties, to bring in a special "first-class" jury for assizes, *Slacke* 1022.

Increased standards proposed in respect of lands, &c., and house property. *See* previous sub-heading.

Conclusion of Committee that any large increase of the qualification is out of the question, and that a small increase would not suffice to alter the general character of the juries, or exclude unfit jurors; an improvement of present jury system must be looked for elsewhere, *Rep.*, par. 32–5.

Re-entry. Proposal to give summary jurisdiction in cases of re-entry after eviction by legal process, *Bolton* 3904. See also *Forcible Possession.*

Reade, William Morris. (Analysis of his Evidence.)—Is Resident Magistrate for Galway town, 1049——Last six weeks spent in Galway; eighteen years' previous experience in Westmeath, where he regularly attended the assizes, 1050, 1056.

Bad conduct of Westmeath jurors in all agrarian cases; their sympathies invariably with the prisoner, 1051–3——They have much deteriorated during the last five or six years, 1054–5.

Approves raising the qualification; this might be done without interfering with proper supply, but doubts whether it would cure the present state of things, 1058–61, 1084——Would raise it to from 65 *l.* to 100 *l.*, 1062.

Right of challenge invariably exercised to exclude respectable jurors, 1063–5.

Jurors attend well as a rule; has never seen any failures of justice from non-attendance, 1066.

Agrees with Capt. Slacke's proposal to substitute trial by judges of assize in agrarian cases, but would rather have three than two judges, 1072——Jurors, to prevent failures of justice, must be drawn from a class superior to that of the person tried, 1078–9.

Mischievous effects of Ribbonism on juries, 1067–71, 1073——Its connection with the Land League, 1074, 1110——Its prevalence in Westmeath, 1088–1102——Salutary results of the Westmeath Act, 1097–1108.

Recognizances. Uselessness of, in assault cases, *Morris* 3670——Seldom estreated; it is a long and tedious process, *ib.* 3746–51.

Record Juries. On Munster circuit, under old system, were very good, *Barry* 1377–8.

Rejection of Jurors:

Powers of Crown as to, largely neutralised by prisoner's right of challenge, *Purcell* 15——Objections, nevertheless, to any absolute right of rejection; a man may be a fit juror in some cases, but not in others, *ib.* 112–4.

Proposal to empower Crown to exclude jurors, otherwise qualified, on the ground of want of intelligence, *Molloy* 630.

Proposal to give the local resident magistrates, at petty sessions, a discretionary power of exclusion, independently of present grounds of incapacity, *Boyd* 2520.

Proposal to give sheriff a power of rejection for sufficient reason, to be stated on a separate schedule, and if necessary, on oath, *Bottomley* 1178–88, 1223–6——This only with common juries, *ib.* 1244——The proposal disapproved, *Justice Barry* 1328–9——Objection to requiring sheriff to give reasons, *De Moleyns* 1700.

Difficulties of any judicial powers of exclusion, owing to want of proof of a juror's partiality, *Purcell* 105——But notoriety is a fact, and the police could produce it in evidence before the judge, *Blake* 165.

Approval of giving a limited discretion to sheriff, regard being had, under present precept, to the "fitness and competence" of the jurors, *De Moleyns* 1698–1700.

Inconvenience arising from want of power to exclude incompetent jurors; this point overlooked when the system of selection was abolished, *Justice Barry* 1331.

Relieving Officers. Their pay and duties as regards jury lists, *Blake* 269.

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special juries and in civil cases, *Bence Jones* 500–2, 513, 539–42, 552——Unanimity hopeless with Dublin juries where question of religion interveues, *Byrne* 774.

Frequently a motive for challenging jurors, *Blake* 2828.

Would probably step in if the verdict was that of the majority, *Bence Jones* 588.

Absence of sectarianism in Queen's County, *Hamilton* 1134——Prevalent in Armagh; leads often to wrong acquittals, but juries do not go so far as to convict unjustly, *Barry* 1347.

Rescue, Cases of. Unsatisfactory conduct of jurors in, *Barry* 1347; *Boyd* 2430; *Macdonnell* 3548–54——Expediency of giving summary powers to magistrates at petty sessions, *ib.* 2510–11.

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Re-trials. Proposal to have a case re-tried after a perverse verdict, *Gibson* 3384–9——After perverse conduct of jury, verdict or no verdict, *Elrington* 3793–9.

Practical certainty of acquittal on re-trial, after a disagreement in first instance, *Leahy* 3625——No experience to that effect, *Elrington* 3810–4——Instances of re-trials, *Blake* 212–6; *Buchanan* 356–61. See also *Convictions.*

Revision, Court of. Sittings of, *Edmondson* 468: *Byrne* 805——Limited powers of Revising Barrister in regard to exclusion of improper jurors, *Purcell* 22, 102——He has no opportunity of correcting the lists unless objections are brought before him, *Whitney* 2605–6, 2690–3; *Morris* 3761——And jurors themselves very rarely attend to object, *ib.*

Non-approval of suggestion to entrust revision to another Court, composed of Chairman of county, assisted by persons who would report names of objectionable jurors, *Purcell* 103.

Defects of present system, owing to want of personal knowledge of jurors by the judge; proposal to substitute magistrates at petty sessions, with power to exclude at discretion, *Boyd* 2520.

Sessional Crown Prosecutor and Sub-Sheriff should always attend at the revision, in order to check the lists, *Moore* 3969.

Would leave revision to the Court as at present constituted, but would have the Court sit oftener, *Edmondson* 440.

See also *Jury Lists. Jurors' Book. Panel.*

Ribbonism. Ribbon combinations in Westmeath, *Molloy* 651; *Morris-Reade* 1071——Connection of, with Land League, *Morris-Reade* 1074, 1110——Black-mail paid to avoid effects of, *ib.* 1095.

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Local jurors not dependable in riot cases; they are always ordered to stand aside, *Fitzgerald* 2895.

Expediency of giving powers of summary jurisdiction in cases of riot and tumultuous assemblies, *Mitchell* 1920–6; *Boyd* 2510–11; *Dowling* 3151; *Hamilton* 3295; *Morris* 3668——With power of imprisonment up to six months, *Nelligan* 3432–3.

Proposal to give resident magistrates a limited jurisdiction in such cases, *Lloyd* 3207–9.

Local justices apt to treat such cases too leniently from the first, *Lloyd* 3259——Practice of simply binding over to keep the peace, *Dowling* 3152.

Recommendation of Committee that magistrates should be enabled to deal summarily with offences of rioting, *Rep.* pars. 68–9.

Roden's (Lord) Committee, 1839. *Molloy* 656–7.

Roman Catholics. Fewness of, with high rating qualifications in Tyrone, *Buchanan* 322——Proportion of, to Protestants on jury lists in that county, *ib.* 315, 334–5, 373.

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Probable exclusion of large numbers of, if the qualification is raised, *Buchanan* 322; *Bottomley* 1248——No fear of this in Armagh, *Whelan* 1578.

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Roscommon. Activity of Land League in, *Hamill* 1813–4——Composition of juries, *ib.* 1769–70——Intelligence of shopkeeping element in small towns, *ib.* 1816.

Rotation of Service. See *Alphabetical Rotation.*

Ryan Trial of, for wounding Mr. Todd, *Bolton* 3848–52.

Ryans, The. Trial of the two Ryans for murder, *Bolton* 3853–7.

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Sanders, Mr. Case of, referred to, *Leahy* 3621.

Scanlan, Mr. Murder of, *Bolton*, 3840-6.

Scotch Juries Act, 1825. Provisions of, with regard to challenges, and (sect. vii.) admixture of special jurors on common juries in criminal trials, *Molloy* 639.
See *Special Jurors.*

Scotch Law. System of, most unfavourable to the prisoner, as compared with that in Ireland, *Justice Lawson* 4398.

Seed, Mr. Crown solicitor on Home Circuit; his evidence before Committee of 1871 referred to, *Molloy* 637, 656.

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Sheep Stealing. Convictions easy in cases of, *Dowling* 3159; *Hamilton* 3285; *Leahy* 3615——Doubts whether juries could now be trusted in such cases, *Mitchell* 1911–3, 1960-1.

SHERIFF OR SUB-SHERIFF. Former duty of making out jurors' lists, under Act of 1725, *App.* A., p. 469——His powers transferred to the judges in 1745, *ib.* p. 470.

1. *Evidence respecting present Duties, &c.*
2. *As to former System of Selection of Panel; Question of reverting to it.*
3. *Suggested Modifications of present System of Rotation.*

1. *Evidence respecting present Duties, &c.:*

His duties as to preparation of panel now purely mechanical, *Buchanan* 365——Importance of making it more his interest to see that the jury lists are correct, *Edmondson* 435-41——Suggestion to make sub-sheriff a permanent officer of the court, *ib.* 435.

Complaint against sub-sheriff for misinterpretation of the law; belief that they do their duties very loosely, *Harvey* 818.

Suggestion to enable sheriff to correct errors in proposed panel before trial, *Byrne* 805.

Duties as to summoning jurors, *Huggard* 935, 979; *Bolton* 3959.

Evidence of a sub-sheriff, *Bottomley*, Evidence *passim*—— Suggestion to give sub-sheriff, who prepares the panel, the power of rejecting certain names, *ib.* 1223.
See also *Alphabetical Rotation.* *Panel.* *Rejection of Jurors.*

2. *As to former System of Selection of Panel; Question of reverting to it:*

Much complained of, especially in political cases, *Purcell* 23-4——These complaints were probably not often well founded; but it would not be desirable to revert to system, 24.

Gave a reason, now no longer existing, for right of peremptory challenge, *Blake* 163 —— Secured higher-class juries, and hence more convictions, *e.g.* for agrarian murders, 182–3——But sheriff frequently made out panel according to class of crimes to be tried; this was bad in principle, and destroyed popular confidence in impartiality of selection, 193–7.

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Report, 1881—*continued.*

SHERIFF OR SUB-SHERIFF—continued.

2. *As to former System of Selection of Panel; Question of reverting to it*—cont^d.

Led to suspicion of unfairness; this suspicion was no doubt unfounded (case cited, 315-6), but the system was bad, *Buchanan* 313-4, 354-5.

Objectionable in regard to unlimited power of discretion, *Molloy* 611; *Huggard* 976——Much complained of; instance of panel being quashed in consequence, *Molloy* 611, 658——These complaints are now removed, 659.

Advantageous in some respects, but the present system is more fair, *Slacke* 1022.

Complained of at the time, but believes without ground, *Bottomley* 1180——Would revert to it in the case of special jurors, which were better than at present, 1175-7, 1214.

Worked very well in many districts; complained of in some parts, but not on Munster circuit, *Barry* 1327, 1379, 1504——Theoretically objectionable, however, and cannot therefore be restored, 1327.

Propriety of, distrusted from instance (cited) of its bad effects, though sheriff meant nothing wrong, *Hamill* 1833——Life and liberty too sacred to be placed at the mercy of any man's selection, *ib.*

Never known to have been abused, nor is there any tradition to that effect, *Morphy* 1970——Impossible, however, to revert to it, from commotion the change would cause, 1971.

Objectionable generally; present system preferred, *Monahan* 2255.

Worked satisfactorily, *Gibson* 2276—— The only complaints against it were from those classes who suffered from the convictions; the feeling was fear of conviction rather than distrust, 2279, 2406, 2410——Would decidedly revert to it, if the Bill could be carried, as the only means of securing intelligence and responsibility, 2281, 2403.

Worked with fairness; sheriff did his duty impartially, *Fitzgerald* 2888——But present system preferable, as people have more confidence in it, 2889.

Objectionable as open to suspicion of abuse, and as tending to impair confidence in administration of justice, *Kelly* 3000-1——Instances known of its having been abused, 3001.

Less conducive than present system to advantage of prisoner, *Dowling* 3163——Gave generally more satisfaction, and secured better juries, 3133-4, 3161-4.

Complaints of packing juries were quite unfounded; but there was a violent agitation on the subject, *Hamilton* 3279, 3292——Afraid it cannot therefore be reverted to, 3279.

Objectionable, not as having been actually abused, but because people suspected it, *Morris* 3652.

Preferable, in principle, to present system, from objections to rating as a test of qualification, *Elrington* 3783; *Macdonnell* 3549——Its restoration, however, assumed to be impossible, *Elrington* 3781——Would not like, as a sub-sheriff, to have the power again: the responsibility would be disagreeable, and public opinion would be against it, *Macdonnell* 3550-3.

Gave exceedingly good juries, *Justice Lawson* 4118——Impossible, however, to restore it; and if restored it would not ensure good juries now, 4117-8.

Principle of responsibility of public officer preferred; the possible abuse of his powers should have been guarded against, not destroyed, *Justice Fitzgerald* 4172——Impossible, however, now to revert to it, *ib.*

Conclusion of Committee that it would be unadvisable to return to the old system of selection of the jurors by the sheriff, *Rep.* pars. 5 and 6.

3. *Suggested Modifications of present System of Rotation:*

Proposal to combine advantages of past and present systems, by dividing jurors into two classes, *Slacke* 1022.

Compromise proposed in common jury cases, by giving sheriff a limited power of rejection for sufficient reason, to be given on a separate schedule, and if necessary on oath, *Bottomley* 1178-88, 1223-6, 1244——The proposal objected to, *Barry* 1328-9.

Qualified approval of a limited power of discretion, regard being had, under present arrangement, to the precept as to "fitness and competency" of jurors, *De Moleyns* 1698-9——The sheriff could hardly be called on to give reasons for not summoning, but might certify as to proper exercise of discretion, *ib.*

Shiels, The. Conviction of, for murder, *Molloy* 674-5.

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Report, 1881—*continued.*

Shopkeepers. Large proportion of, on common juries, *Blake* 280; *Hamill* 1769——Almost all the country shopkeepers are farmers as well, *Blake* 281——Sympathy of, and close connections with agricultural population, *Morphy* 2047–8.

Inferiority of, as special jurors, in Antrim, *Bottomley* 1206–8; *Barry* 1333.

Small number of, on Limerick panel, *De Moleyns* 1651–3——Class of, brought in by 10*l.* qualification in Clare, *O'Brien* 2191.

Slacke, Captain Owen Randall. (Analysis of his Evidence.)—Is Resident Magistrate at Carrick-on-Suir; attends assizes and quarter sessions in three counties, 986, 1043.

Present system works fairly well in ordinary cases, but in agrarian and political cases, and assaults on police, it has utterly failed, 988–9, 995–6——No chance of conviction in important cases, 1026–7.

Jurors influenced by intimidation (Mr. Boyd's murder an instance), and by fear of unpopularity, 992, 997——Threats of Boycotting in the jury-room; there is more fear there than out of it, 993–4, 1039——No personal knowledge of jurors having actually suffered from doing their duty, 1018.

Higher qualifications, as with special jurors, produce men of more independence, 999–1000, 1032——Agrees with Mr. Huggard (948–50) as to juries preferring an unwritten code of their own to the law of the land. 1008——They look out for any loop-hole to acquit, however far-fetched the excuse, as in case cited, 989, 1008.

Would partially abolish trial by jury, and enable Attorney-General to have case tried (1) in political and agrarian cases, by the two judges on circuit, and (2) in any other case, not fit for a jury, by two judges at assizes, 1019–20——Believes people would have confidence in a trial by judges, 1026–7.

Would divide jurors into two classes, one for assizes, the other for quarter sessions, the former with a 100*l.* qualification, 1022——This would give better juries, and relieve hardships of unnecessary attendance, 1023——Would leave minor offences only to quarter sessions, 1036, 1048.

Would reduce peremptory challenges to six in all cases, leaving power to challenge any number for cause shown, 1024–5——Would not abridge powers of Crown as to ordering jurors to stand by, 1023.

Finds the greatest difficulty now in getting evidence, 1028–9——Reluctance of upper class jurors to attend; they dislike sitting with men with whom they have no feelings in common, 1033——Their absence lessens influence of juries, *ib.*——The present class of jurors not good enough for important cases, setting aside present agitation, 1040–1.

Sligo. Composition of jury lists for, *Hamill* 1779–80.

Special Commissions. Lord Blackburn's Special Commission of 1848 referred to, *Bence Jones* 582; *Molloy* 644–7; *Huggard* 981–3.

Issue of, recommended, if all palliatives fail, but not to same extent as in 1833, *Morris* 3715–7——Objected to on ground of expense and delay, *Boyd* 2488.

See also *Trial by Judges*: *Commission.*

Special Jurors:

Local statistics respecting, *Huggard* 829; *Whitney* 2673; *Blake* 2777; *Bolton* 3935.

(*Qualification.*) In Roscommon and Sligo: the 50*l.* for towns approved; proposal to increase the county qualification to 120*l.* or 150*l.*, and proportionately elsewhere, *Hamill* 1862.

In Mayo: town and county standards approved, *Macdonnell* 3582——The 70*l.* for county generally brings in men of property; it excludes the small farmer class, *Whitney* 2579.

Cork city: the 50*l.* qualification approved, it admits small farmers, *Blake* 2777–8.

Dublin city: a difficult franchise to deal with, *Edmondson* 479–80.

Clare and Kerry: county qualifications in, *Morphy* 2011; *Morris* 3657; *Huggard* 961.

(*Payment.*) Scale of, with Dublin jurors, *Molloy* 606.

(*Attendance and Service.*) Unequal provisions of Act as to attendance at assizes, *Harvey* 821——Practice at assizes of nominally calling over, *Gibson* 2289——As to special jurors under sect. 2 of Act of 1876, *Edmondson* 411–2——Service constantly escaped under old system, *Corcoran* 3527.

(*Character and Conduct.*) Belief that they are not free from sinister influences, *Blake* 248——Case of canvassing cited, *Bence Jones* 509, 514.

Favourable experience of, at Dublin, *Molloy* 668: *Gibson* 2292——They are usually men of more independence, *Slacke* 1000——Deterioration of, under new system, in Antrim, *Bottomley* 1160, 1175–7. 1200–8——Incompetence to deal with mercantile cases, *ib.* 1206——The fact ascribed to admixture of farming element, *Barry* 1333——Verdicts frequently frustrated by religious differences, *Bence Jones* 500–2, 539–42.

Evidence

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Report, 1881—*continued.*

SPECIAL JURORS—continued.

Evidence as to Special Juries in Criminal Cases:

(a.) *Special Juries struck under Old System.*
(b.) *Admixture of Special Jurors on Common Juries: Scotch System.*
(c.) *Question of calling for a Special Jury.*

(a.) *Special Juries struck under Old System:*

The system stated, *Slacke* 998; *Justice Lawson* 4082; *Justice Fitzgerald* 4233——It applies to all special juries in criminal cases, *Kelly* 3019; *Justice Fitzgerald* 4199.

Decision of Court of Queen's Bench as to prisoner's right of challenge: the system bad in this respect, *Monahan* 2245-52; *Gibson* 2306–24; *Justice Lawson* 4082; *Justice Fitzgerald* 4199, 4233.

Recommendation of Committee that in cases of trials by special jury the right of challenge without cause be no longer conceded, *Rep.* par. 52–3.

(b.) *Admixture of Special Jurors on Common Juries; Scotch System:*

Liability at present of special jurors to serve on common juries, *Moore* 3979——The service much disliked, *Whitney* 2581–2, 2593–4.

Scotch system of one-third special jurors described, *Molloy* 639.

Proposal to apply the principle to Ireland, *Molloy* 639——Not as a cure, but as a step in the right direction, *Whitney* 2569, 2577, 2660——As working well in Scotland, *Fitzgerald* 2910, 2948–53, 2989——Coupled with conditions as to right of challenging the special jurors so introduced, *Ferguson* 3346–9; *Macdonnell* 3559, 3567.

The proposal objected to: as tending to set class against class, and leading to disagreements, *Bottomley* 1268, 1269–70; *Justice Lawson* 4127——As unnecessary, and drawing an artificial line of demarcation on the jury, *McBlaine* 2764–6; *Kelly* 3082–7——As tending to create jealousy and discord, *Moore* 3980, 3982——Disbelief in its securing satisfactory verdicts at present, *Huggard*, 914.

The proposal approved in principle; but there is the objection of class feeling, and, moreover, a certain number of special jurors are found on common juries already, *Justice Fitzgerald* 4233, 4244——It would involve changing system of selection by ballot, with separate lists and ballot-boxes, *Nelligan* 3443–5.

The proposal considered in connection with drain on special jury panel, *Nelligan* 3483-4; *Morris* 3690.

See also *Upper Class Jurors.*

Recommendation of Committee to include by ballot in common juries at least three persons qualified as special jurors, the same to be replaced by others when challenged, *Rep.* par. 43.

(c.) *Question of calling for a Special Jury:*

Advantageous to some extent with crimes of violence; but people would probably prefer trial by judges; they would think that the jury was specially selected for conviction, *Blake* 224–6, 246–7.

Expediency of enabling Attorney General to call for a special jury, *Gibson* 2422–3; *Kelly* 3048, 3104; *Morris* 3683–4; *Justice Lawson* 4060——Prefers to give this power to either party on demand, as in civil cases, *Justice Fitzgerald* 4202–5——The special jury should be under the new system, *Kelly* 3048.

Advantages of a special jury in agrarian cases in particular, *Gibson* 2277–9; *Morris* 3683–4——In assault cases, *Gibson* 2277——In criminal cases generally, at discretion of Crown, *Kelly* 3048, 3104——In serious cases especially, *Justice Lawson* 4060.

Proposal to have a special "first class" jury, at 100*l.* qualification, for assize work, leaving minor offences to a "second-class" jury at quarter sessions, *Slacke* 1022.

Conclusion of Committee that a recourse to specially selected juries for agrarian and political crimes would be objectionable, as superseding trial by jury in effect, while preserving merely its outward form, *Rep.* par. 76.

See also *Assizes.*

Special Qualifications:

Under Act of 1876, sect. ii.; are too few, *Morris* 3657——The attempt to introduce them was a comparative failure, owing to the wording of the Act; this should be remedied, *Elrington* 3281——Do not exempt from service on common juries, in the absence of a special rating qualification as well; this an oversight in the Act, *Edmondson* 412-3.

Introduction of "qualified residents" recommended by House of Commons' Committee in 1874, *De Moleyns* 1617.

Would qualify graduates of the Universities, *De Moleyns* 1617; *Mitchell* 1953; *Justice Fitzgerald* 4227——Retired officers of army and navy, *Morphy* 2013; *Justice Fitzgerald*

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Report, 1881—*continued.*

Special Qualifications—continued.

Fitzgerald 4227; *De Moleyns* 1617——Militia officers when not actually engaged in training, *Morphy* 2120——Sons of peers, *Barry* 1404; *Morris* 3658——Of magistrates, *Barry* 1404; *De Moleyns* 1617; *Mitchell* 1953; *Morris* 3658; *Justice Fitzgerald* 4227——Of grand jurors, *Barry* 1404; *Fitzgerald* 2983——Of clergymen, *Morphy* 2013; *Boyd* 2518; *Morris* 3658——Eldest sons of county residents, members of corporations, clerks, &c. in commercial houses, *Elrington* 3822.

Objections to qualifying sons of special jurors, &c.; few of them stay at home to be available, and those who do would not much improve the panel, *Neligan* 3449——The objection concurred in, *Macdonnell* 3568-9.

Disbelief in any fancy qualifications as a remedy for present state of things, *O'Hagan* 2144.

Recommendation of Committee to extend the principle of special qualifications, admitted in the Act of 1876, to such persons as half-pay officers of the army or navy, officers of militia, and graduates of English, Scotch or Irish Universities, *Rep.* par. 38-9.

Spirit Dealers. See *Publicans.*

State Trials (*i. e.* the recent State Trials in Dublin). An instance of a special jury struck under old system, *M'Blaine* 2771; *Justice Lawson* 4083; *Justice Fitzgerald* 4133——Futility of the change of venue, *Lloyd* 3198; *Hamilton* 3319——Evidence as to intimidation of jury, *Edmondson* 477-8; *Molloy* 680, 725-6; *Lloyd* 3198.

Stipendiary Magistrates. Favourable opinion of, as a class; their conduct generally commands confidence, *Hamill* 1812; *Mitchell* 1929; *Dowling* 3145, 3166; *Morris* 3767-8——Effect of prompt action by, on diminution of local crime, *Whitney* 2711-27——Their attendance good, *Ferguson* 3360——Insufficiently paid, *Lloyd* 3245-6; *Bolton* 3913——Valuable, as being in direct connection with the Government, *Justice Fitzgerald* 4238.

Unfitness of, generally, as a class; would have none but skilled lawyers, *Blake* 2809-15——Doubts if lawyers would make the best, *Morris* 3778.

Complaints of their sending cases unnecessarily for trial, *Kelly* 3057, 3312——Their action often hampered by local magistrates, *Lloyd* 3204, 3244.

Preference for military men as, from decision of character and knowledge of military law, *Hamilton* 3296——Qualification of such proposed, viz., entry into an Inn, and examination in certain branches of law, *Lloyd* 3244——Would take them from legal profession or constabulary, *Bolton* 3904.

Great strain on, at present, *Lloyd* 3241——Proposal to increase their numbers, *ib.* 3241-3; *Hamilton* 3296——And give them larger jurisdiction, *Morris* 3668-9, 3742, 3770; *Bolton* 3904——Would give them a limited jurisdiction in cases of riot, *Lloyd* 3207-9——Would rather not increase their jurisdiction; prefers doing so with quarter sessions, *Justice Lawson* 4070-80.

Importance of sending them to the various benches, to assist the local magistrates, *Dowling* 3145-7——Their presence always desirable, *Ferguson* 3359; *Morris* 3772——Additional importance of such assistance, if the summary powers of local magistrates are increased, *Kelly* 3063, 3111; *Bolton* 3911; *Justice Fitzgerald* 4238.

Proposal to give summary jurisdiction to a court composed of two stipendiary magistrates, *Hamill* 1801-9.

Opinion of Committee that the increased jurisdiction of local magistrates, as suggested, should not be exercised without the assistance of the stipendiary magistrate; and that the appointment of additional stipendiary magistrates would, for that purpose, be desirable, *Rep.*, par. 70.

Summary Jurisdiction. Limited powers of local magistrates, *Morris* 3668——Would authorise them to deal with any case forwhich a punishment of three months would be an adequate punishment, *Hamill* 1888-9——Importance of defining what cases they are obliged to decide summarily; need of legislation in this respect, *Kelly* 3051, 3091.

Construction of Act in regard to indictable offences; opinion that the magistrates are not bound to send such cases for trial, *Kelly* 3054-9, 3091-4——"Directions" issued to magistrates with regard to certain cases, *Justice Fitzgerald* 4209.

Question of, in regard to cases affecting title and rights of property, *Hamill* 1843, 1850-3——Refusal of magistrates to deal with such cases; their practice in this respect complained of, *Dowling* 3148-50——Opinion that they are excluded by statute; the practice approved, *Neligan* 3434-5——Expediency of excluding such cases, if powers of summary jurisdiction are enlarged, *Justice Fitzgerald* 4208.

Powers of, under Larceny Act and Conspiracy against Property Act, *Slacke* 1026-7.

Preference

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Report, 1881—*continued.*

Summary Jurisdiction—continued.

Preference of prisoner for, in assault cases, where he has an option of trial by jury, *Slacke* 1026-7——This preference applies only to ordinary cases, such as petty larcenies, but not to cases of a political or sectarian complexion, *Hamilton* 1139, 1149.

Insufficient exercise by magistrates of their existing powers, *O'Hagan* 2151, 2180; *Whitney* 2647-52; *Fitzgerald* 2921; *Kelly* 3050, 3057-60, 3113; *Lloyd* 3208; *Justice Fitzgerald* 4209——Contrary experience, *Gibson* 2351; *Ferguson* 3392; *Boyd* 2455-6——They often fear acquittals at quarter sessions, and so prefer to use their powers, 2457——They sometimes dispose of aggravated cases, though strictly beyond their powers, 2456.

Extension of existing powers:—Important, if it can be done without increasing the unpopularity of magistrates; this difficulty, however, perhaps illusory; desirable in this case to entrust the power to magistrates specially appointed, limiting it also to minor offences, *De Moleyns* 1640, 1683-5, 1751-3——Recommended in case of resident magistrates, *Hamill* 1801-9——Inexpediency of drawing any line in this respect between ordinary and resident magistrates, *Whitney* 2648; *Morris* 3726, 3772-5——Extension of jurisdiction preferred to increase of powers of punishment, *Morphy* 2039.

Approval of giving larger jurisdiction, but with limited powers of punishment, to magistrates at petty sessions, with resident magistrates to assist, *Justice Fitzgerald* 4218, 4238, 4248-51.

Difficulty of such extension in case of local magistrates in country districts, from their liability to solicitation, *Blake* 2805-8, 2858.

Importance of such extension generally, *De Moleyns* 1640, 1683; *Whitney* 2647; *Morris* 3668, 3715——Contrary opinion, *Ferguson* 3357.

Desirability of such extension in cases of—
Assault, *Ferguson*, 3357-8, 3369, &c. See also *Assault.*
Riot and tumultuous assemblies, *Mitchell* 1920, 1927. See also *Riot.*
Rescue, *Boyd* 2460.
Forcible possession, *Morris* 3668-9; *Boyd* 2461; *Bolton* 3905-6.
Conspiracy, *Kelly* 3094.
Larceny, *Blake* 2867; *Kelly* 3051. See also *Larceny.*
Minor offences generally, *Mitchell* 1937; *Morphy* 2037; *Bolton* 3904-6.
Cases where verdicts are usually unsatisfactory, *Gibson* 2346-8.

Proposal to give powers of summary conviction—

(1.) to two stipendiary or resident magistrates, for all minor offences connected with present agitation; without appeal, unless punishment exceeds 20 *s.* fine, or a month's imprisonment, and without option of a jury, except in certain larceny cases, *Hamill* 1801-9.

(2.) to Quarter Sessions: in cases of interference with service of process, *Neligan* 3427——In all serious cases requiring twelve months' imprisonment, *Lawson* 4072-4——Objection to giving summary powers to Quarter Sessions, *Justice Fitzgerald* 4208.

Recommendation of Committee that magistrates should be bound to deal summarily with cases of rioting, aggravated assaults, forcible possession (where question of right has been disposed of), assaults on process-servers and all agents of the law, threatening letters, and intimidation; but that such increased jurisdiction should not be exercised without the assistance of the stipendiary magistrate, *Rep.*, pars. 68-70.

See also *Stipendiary Magistrates.*

Summoning of Jurors. The duty of the sub-sheriff, *Huggard* 935——As to summoning dead or absent jurors; defective state of the law in this respect, *Byrne* 805; *Edmondson* 435-6, 441; *Moore* 4002-4; *Monahan* 2243-4; *Bottomley* 1228.

Jurors often not summoned; defects of present alphabetical system, *Blake* 243-6, 264——Hardship of summoning several members of same firm or family, *Blake* 2803——Inconvenience of summoning the whole panel, when there is not enough to do, *Elvington* 3790; *Byrne* 769——Carelessness of officials; instance of a juror not being summoned for ten years, *Blake* 154-8.

Proposal to empower sub-sheriff not to summon in certain cases, *Bottomley* 1223, 1244.

Power of re-summoning jurors under sect. iv. of Act of 1876, *Edmondson* 430-4——The provision objected to, *Monahan* 2242-4.

Proposal to issue a preliminary summons, and to summon additional names in place of those found non-available, *Edmondson* 442.

See also *Alphabetical Rotation* (*Jury Panel*). *Sheriff.*

Supply of Jurors. Insufficient supply of jurors under the old system, *Buchanan* 296-7; *Molloy* 597, 714; *Mitchell* 1901-3.

Superfluity of jurors under present system, *Blake* 144-7, 277-9; *Hamill* 1861;

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Supply of Jurors—continued.

Mitchell 1944; *Boyd* 2515——The number unnecessarily large in Kerry, *Neligan* 3421——In Tipperary, *Bolton* 3885; *Boyd* 2516——In Tyrone, *Moore* 3979.

Statistics of, in Kerry, *Huggard* 829, 977——In Mayo, *Whitney* 2558-60——In Clare, *Kelly* 3005-6.

Importance of interesting officials in getting as many acting jurors as possible, *Harvey* 822.

Various effects of a uniform rating standard in different districts, *Molloy* 616.

Probability of an insufficient supply, if the qualification is raised, *Purcell* 14; *Hamilton* 1124; *Whitney* 2758; *Hamilton* 3281; *Ferguson* 3388; *Justice Fitzgerald* 4173——Contrary opinion, *Byrne* 797; *Huggard* 964, 972, 975; *Morris-Reade* 1059-61; *Hamill* 1779; *Mitchell* 1943; *Kelly* 3005; *Neligan* 3415.

See also *Juries (Ireland) Act*, 1871.

T.

Tabiteau, Mr. J. His evidence before Committee of 1839, referred to, *App.* A. p. 472.

Talbot, Police Constable. Murder of; the case cited, *Molloy* 670-3.

Talesmen. Resort to, for supplying places of absent special jurors, *Blake* 251.

Tenure Qualifications under Acts of 1833 and 1876, *Morris* 3652, 3657. See *Freehold. Leasehold.*

"Terry-Alts." *Dowling* 3142.

Threatening Letters and Notices. Cases of, cited, *Blake* 212-6; *Barry* 1437-42; *Morphy* 2092-3——Difficulty of getting convictions in such cases, *Blake* 263——Are often sent to jurors, and the fact concealed, *ib.* 285-7——A common form of agrarian crime in Kerry, *Morris* 3677——Undesirable to give summary jurisdiction in such cases, *Hamill* 1871——Contrary opinion, *Justice Fitzgerald* 4208.

Conclusion of Committee that magistrates should be enabled to deal summarily with such cases; the stipendiary magistrate to assist, *Rep.*, pars. 68-70.

Tipperary. Rating generally high in, *Slacke* 1032——Faction fighting in, *Gibson* 2294-8——Land League organization, *Bolton* 3877-9——Lukewarm adherence of farmers thereto, *Slacke* 1047.

Attendance of better class jurors very fair, *Gibson* 2286——County jurors nearly all farmers, *Boyd* 2442——General unwillingness to convict, except in ordinary cases of larceny, *ib.* 2428-41, 2487; *Bolton* 3876——Not to be trusted in any cases connected with land, *Gibson* 2299-2307——Favourable experience of common juries under old system, *Bolton* 3927-34.

Tralee. Population of, *Morphy* 2045——Character of jurors at, *ib.* 2046-9——Case of wrongful acquittal at assizes, *Huggard* 844-7, 875-6; *Neligan* 3425, 3431.

Treadmill. Deterrent effects of, as a punishment for crime, *Bence Jones* 589.

Treason-Felony. Cases of, triable at Commission Court at Dublin, *Molloy* 700. See also *High Treason.*

TRIAL BY JUDGES: COMMISSION:

Suggestion to resort to Commission, but only after jury has failed, *Blake* 209——Would empower Attorney General to have case tried by three judges, after two disagreements, and on remit from the judge, after a wrongful acquittal, *ib.* 166.

The Court should have power of trying cases by three judges, as in Canada, when an honest jury could not be got, *Bence Jones* 575-7.

Alternative system proposed for all cases, civil and criminal, in proclaimed districts, viz. (1) trial by judge with three jurors; (2) trial by two judges alone, who must be unanimous to fix the verdict; the latter of these preferred, *Byrne* 753, 775, 787-8.

Trial by one or two judges recommended for agrarian cases, if order is not restored, *Huggard* 915-7.

Proposal to empower Attorney General to have case tried (1) in agrarian and political offences by two judges on circuit; (2) in any other case, not fit in his opinion for a jury, by the two judges on assizes, *Slacke* 1019-20——Belief that this would be considered fair by the people, *ib.* 1026-7——This proposal concurred in, but would prefer three judges instead of two, *Morris-Reade* 1072——Would substitute for jury at quarter sessions the chairman, or county court judge sitting with magistrates, *Hamilton* 1136-7; *Boyd* 2488.

A commission

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TRIAL BY JUDGES: COMMISSION—continued.

A commission of judges would ensure a fair trial and entail no injustice; it is a matter of policy, and not for witness, *De Moleyn* 1701–9.

Would have trial by two judges at present for all graver offences, *Mitchell*, 1937.

In agrarian cases, and for disturbed or proclaimed districts, would resort to two judges, but without powers of capital punishment, *O'Brien* 2216-8.

Might be desirable under present circumstances to empower Attorney General to have certain cases tried by judges, but doubts if he would exercise that power, *Gibson* 2381–3.

Would have certain cases tried by two judges of assize, or one judge and two Queen's Counsel or two chairmen, *Kelly* 3102, 3035–6.

Would have trial at assizes by three judges in proclaimed districts, *Lloyd* 3202——And at quarter sessions by chairman and two resident magistrates, *ib.*

Would have agrarian cases, in proclaimed districts, tried by two judges of assize, *Hamilton* 3812-4.

Would have certain cases tried at assizes by two or three judges, *Neligan* 3430–1——This for a limited time and in certain districts, 3441-2——The Attorney General to have power to remove such cases, 3496——The difficulty at quarter sessions would be whom to associate with the chairman, 3429.

If all palliatives fail, would have agrarian cases in disturbed districts tried by three judges of the superior courts; but this only as a last resort, *Morris* 3715, 3723.

Grave difficulties to trial by judges; it would probably involve examination of prisoner; not to be resorted to except in the direst necessity, *Elrington* 3815-6.

Disapproval of a commission of judges; it would create a prejudice against the judges and be unfair to the prisoner, *Whelan* 1585–6——Preference for sending certain cases for trial by county court judge and magistrates at quarter sessions, *Boyd* 2469–71, 2484–5, 2488.

Constitutional objections to assigning functions of jurors to judges, *Justice Lawson* 4155: *Justice Barry* 1451——It would shake the present confidence in the judiciary, *ib.* 1449——If a special tribunal is created, it should be one *pro hac vice*, and not composed of judges at all, *Justice Lawson* 4155–7.

TRIAL BY JURY. Popularity of, in Ireland, especially in civil cases, *Ferguson* 3376——"Superstitious" views respecting, *Bence Jones* 577.

Described as a "farce" at present, *Purcell* 6–9; *Byrne* 785——The expression, as used by witness, explained, *Justice Barry* 1333-5, 1347, 1368–74, 1472.

Opinion that any interference with, at present, would lead to additional feelings of injustice, *Buchanan* 392–3——The jurors certainly are conscious of their power, and would be loth to lose it, *Purcell* 48.

Is of very little use in Ireland, from general want of moral principle among jurors, *Bence Jones* 503, 510, 513——Failures of justice inseparable from any system of, *Molloy* 715——Liability of any system to break down on occasions of great passion and excitement, *Barry* 1375——No jury system could be depended on at such a crisis as the present, *De Moleyns* 1701–9, 1717, 1726.

Is a direct incentive to crime in many parts of Ireland; jurors are demoralised by having to violate their oaths from intimidation, *Hamilton* 3278, 3291.

Tendency of recent legislation to increase class of cases not triable by jury, *Justice Fitzgerald* 4133.

Conclusion of Committee that trial by jury has largely broken down in consequence of the social disorder arising from present agrarian agitation, and that under these circumstances it will be for the Government to determine whether, for a limited time, within a limited area, and in regard to crimes of a well-defined character, it should be replaced by some form of trial less liable to abuse, *Rep.*, pars. 71–5.

Operation of present System generally:

Satisfactory in Tyrone and Ulster, *Buchanan* 389-91——Has worked well in Louth and Down, *McBlaine* 2745——In Queen's County, *Corcoran* 3512——On North-east Circuit, except in agrarian cases, and putting aside present agitation, *Hamill* 1760, 1763–6——In Antrim generally; would not propose much change, *Bottomley* 1298, 1303.

Has not given complete satisfaction, but the complaints were such as were made also against the old system, *Molloy* 629, 713–6——Worked unsatisfactorily at first, but was improving until present agitation began, *Huggard* 837, 878, 877–80——Jurors awkward at first, but are now satisfactory on the whole, *O'Hagan* 2127–8; *Fitzgerald* 2917, 2894, 2914–6; *Ferguson* 3339–40.

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TRIAL BY JURY—Operation of present System generally—continued.

Hardly fairly tried at present, owing to exceptional state of things; agrarianism is the main difficulty, *De Moleyns* 1664–71——Much improved in 1876, but is now going from bad to worse, *Gibson* 2391–3——Paralysed in certain cases by present agitation, *Kelly* 3101——Worked fairly well before, *Neligan* 3409, 3480.

Unsatisfactory since 1874, *Purcell* 55, 122——Has broken down in certain cases, *e.g.*, agrarian offences, crimes of violence, &c., *Slacke* 988–96; *Morphy* 1973, 2002–4, 2017; *O'Brien* 2208, 2216; *Lloyd* 3273; *Hamilton* 3285–6, 3293; *Leahy* 3614–5——Past hope of any mere modification in agrarian cases, *Morris* 3756.

Unsatisfactory in regard to class of jurors, *Harvey* 813; *Hamilton* 1119–20, 1144; *Mitchell* 1905; *Whelan* 1530.

See also *Agrarian Agitation.* *JURIES (Character and Conduct).* *Juries (Ireland) Act*, 1833.

Question of abolition or suspension of Trial by Jury:

Opinion that suspension would be welcomed by jurors and by all well-disposed people, *Hamilton* 3282, 3308–10, 3335.

Strong disapproval of abolition, *Moore* 3980——Alternative remedy proposed, *Justice Lawson* 4077——Would not resort to it until everything else had failed, *Bolton* 3883, 3896.

Suspension in certain districts preferred to change of venue from south to north, *Justice Fitzgerald* 4212–3.

Suspension recommended in certain cases; substitutes proposed:—See *Trial by Judges.*

Triers (i.e. Juries of Discovery):

How composed, *Purcell* 89; *Blake* 160; *Barry* 1477——Their appointment and duties, *Purcell* 88; *Barry* 1476——Powers of, originate in common law, *Barry* 1487——Rarely resorted to, *Purcell* 86–7——Never heard of except in political trials, *Barry* 1477–8, 1483——Are appointed only if cause of challenge is shown, or the whole panel is objected to, *Bottomley* 1262——Instance of their rejecting an improper panel, *Molloy* 613——Has only once seen the whole panel challenged, *Barry* 1498–9.

Opinions in favour of transferring to the judge their duty of trying grounds of challenge, *Blake* 164; *Buchanan* 388; *Bottomley* 1263–4, *Neligan* 3456–8; *Morris* 3695——This proposal objected to, as throwing an invidious duty on the judge, *Purcell* 92.

Tureny, Barony of. Unqualified jurors in, under old system, *Molloy* 599.

Tyrone. Efficiency of county jurors under new system, *Buchanan* 308–19, 396; *Moore* 3962——The panel unnecessarily large, *ib.* 3979——Jurors nearly all farmers or town traders, *ib.* 3983–6——Experience of jurors at assizes, *Justice Barry* 1463–9.

Comparative quietness of the county, *Buchanan* 323–6; *Moore* 3964——Many estates in, let at Griffiths' valuation, *Buchanan* 320——Evidence as to Roman Catholic jurors in, *ib.* 322, 373–7.

U.

Ulster. Jury system in, sound and satisfactory, *Buchanan* 390——Jurors do their duty very fairly, *Hamilton* 3280——Could trust them in agrarian cases, *Moore* 4015–6.

Leaseholders and freeholders very few; yearly tenancies preferred, *Hamilton* 3280.

Unanimity. See *Verdicts.*

Undefended Cases. Proposal to empower judge to find a verdict, owing to difficulty of securing attendance of jurors, *Monahan* 2271——Would have civil cases triable without a jury, *Justice Fitzgerald* 4133.

UPPER CLASS JURORS:

Small minority of, at present, on common juries, *Morphy* 1980; *O'Hagan* 2134; *O'Brien* 2205; *Boyd* 2444; *Gibson* 2285.

Circumstances contributing to exclude them from the jury-box, viz.:

Danger of acting independently, *Blake* 149, 222, 257; *Byrne* 767–97——This especially in country districts, *Ferguson* 3343.——See also *Intimidation.*

Knowledge of their powerlessness on jury, being so few, *Purcell* 28——And that the low class jurors care nothing about the evidence, and will not discuss it with them, *Bolton* 3941.

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Report, 1881—*continued.*

UPPER CLASS JURORS—continued.

Service on grand juries, *Purcell* 35-6; *Hamill* 1863; *Morphy* 1985, 2111, 2032; *O'Hagan* 2173-4; *Kelly* 3037-8, 3088-9; *Nehgan* 3416; *Macdonnell* 3544-5, 3579.

Service on special juries, *Purcell* 35-6.

Prisoner's power of challenge, *Purcell* 37; *Blake* 144; *Bottomley* 1195; *Morphy* 2103; *Fitzgerald* 2909; *Ferguson* 3240-2; *Morris* 3661; *Justice Fitzgerald* 4180.

Canvassing; they dislike to yield to it, and so stay away, *Ferguson* 3343.

Inconveniences of attendance, *Blake* 222; *Byrne* 772; *Huggard* 864; *Harvey* 821——They expose themselves to so much annoyance in serving, it is natural they should shirk, *Morphy* 1988.

Social reasons, viz.: Dislike of sitting with social inferiors, and men with whom they have no feelings in common, *Blake* 150; *Byrne* 755, 762, 793; *Slacke* 1033; *Barry* 1518; *Bottomley* 1203; *Macdonnell* 3545; *Elrington* 3817——This the main, if not only reason, *Fitzgerald* 2906-8——Fines would not cure it, *Elrington* 3817.

Carelessness of officials in summoning them; they frequently escape service in this manner, *Blake* 154, 157, 174; *Bottomley* 1305.

Experience that they attend very well, as a rule, *Bottomley* 1204; *Morris-Reade* 1066——They do not abandon their duty, though it is unpleasant and dangerous, *Gibson* 2286——No unwillingness to attend from capricious or improper motives, *Bottomley* 1174——There was no difficulty in getting them under the old system, 1202.

Too much stress laid on their non-attendance, their numbers on panel being so few, *Barry* 1515.

Importance of securing more of them on common juries generally, *Dowling* 3143; *Fitzgerald* 2910; *Ferguson* 3346; *Bolton* 3892; *McBlaine* 2763——As securing more intelligence and independence, *Byrne* 756, 792; *Barry* 1404-8; *Hamilton* 3289——And tending to inspire public confidence in verdicts, *Byrne* 757——They are wanted particularly in criminal cases, *Blake* 152; *Molloy* 639-41——Doubts if they would be much use at present in such cases, *Bottomley* 1196——Desirable to get them as an experiment, but doubtful whether they would have a decided effect, *Leahy* 3658-9

Advantage of having even a few on common juries, *Morphy* 2007; *Boyd* 2446; *Whitney* 2600-3; *Fitzgerald* 2961; *Kelly* 3032; *Macdonnell* 3559, 3578——Even a few intelligent jurors will lead and guide the others, *Ferguson* 3375——One man only of education and trained habits will do much to influence them, *De Moleyns* 1614.

An admixture of them on common juries would probably lead only to disagreements instead of wrong acquittals, *Blake* 166, 238——Would expose them to danger; they would be sure to suffer for their independence, *Lloyd* 3196; *Hamilton* 3290, 3308-11——Would not prevent disagreements against strong evidence, *Byrne* 773——Or counteract general want of moral principle among jurors, *Bence Jones* 586——Under present circumstances would set juries by the ears, class feeling being so strong, *Elrington* 3818-9——Contrary opinion; disbelief in any danger of class jealousy, *Fitzgerald* 2963-5——Objections to any compulsory regulation involving a line of demarcation; would rather trust to natural working of present system, *McBlaine* 2764.

Means suggested for securing more of them on common juries:—

Increase present fines, *Nehgan* 3422. See also *Fines.*

Reduce number necessary for a verdict; failing which, raise qualification, *Byrne* 759-60.

Effectually carry out law as it stands, in regard to summoning them, *Blake* 172-3.

Reduce number of exceptions, *Byrne* 731-5, 789. See also *Exemptions.*

Introduce non-rating qualifications, *Barry* 1404-8. See also *Special Qualifications.*

Raise qualification, *Slacke* 1033-6. See also *Rating Qualification.*

Adopt Scotch system, requiring a certain proportion of special jurors, *Molloy* 639-41. See also *Special Jurors.*

V.

VENUE, CHANGE OF:

(In Civil Cases):—The practice described; expense inflicted on plaintiff, *Gibson* 2341-2, 2367-8.

(In Criminal Cases):—By application to Court of Queen's Bench by Attorney-General, *Purcell* 74; *Gibson* 2343——Absolute jurisdiction of the court, *Barry* 1349-50——Present procedure approved, *Whitney* 2592——Objected to, as troublesome, *De Moleyns* 1638——As occasioning delay, *Bolton* 3899, 3900——As cumbrous and

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Report, 1881—*continued*.

VENUE, CHANGE OF—continued.

and expensive, *Justice Fitzgerald* 4199——As excluding consideration of circumstances known to Attorney General, but which could not be stated publicly, *Kelly* 3049.

Rarely resorted to, *Justice Barry* 1456; *Justice Lawson* 4059——Contrary evidence, *Blake* 168, 265——Instance of, in Mr. Boyd's case, *Slacke* 997, 1002–7——Almost always to Dublin, from number of jurors there, *Justice Barry* 1350.

Wholesome effect of, shown by winter assizes as to, *Blake* 266–7; *Whitney* 2620; *Ferguson* 3397–9.

Practice of Crown paying expenses of prisoner's witnesses in cases of, *De Moleyns* 1746——The practice approved, *O'Hagan* 2148–9; *Gibson* 2422——Condition to that effect imposed by court, *Justice Fitzgerald* 4207.

Importance of giving facilities for, where there is local excitement, *Purcell* 71, 73; *Buchanan* 399; *Ferguson* 3351–4, 3387, 3396; *Kelly* 3048; *Whitney* 2589–91; *Justice Lawson* 4056–8.

Recommended as the best remedy for present state of things, *Bolton* 3883, 3898.

Doubtful efficacy of, at present, *Purcell* 44, 76; *Mitchell* 1938–42; *Hamilton* 3294; *Justice Fitzgerald* 4211——Useless, unless a venue is found free from disturbing influences, *Nelligan* 3346.

Opinion that a mere change from one county to another would do no good, *Gibson* 2372——The change should be to cities like Cork or Dublin, *ib.*——Belief that Dublin jurors would be open to intimidation, *Whitney* 2637–40.

Importance of a change of venue, in agrarian cases in particular. *O'Hagan* 2144; *O'Brien* 2215——Suggestion to send such cases to Dublin, or even Belfast, but not to Cork, *Morris* 3663–7, 3735–41——A change to Dublin would not be enough in such cases, and would overtax Dublin jurors, *Huggard* 955——Desirable, if possible, to send them to England, *ib.* 925–8——A change from south to north approved, *Hottomley* 1313.

Advantage of possibility of interchange of venue between England and Ireland in extreme cases; short of that, a change from south to north of Ireland approved, *Blake* 167–70, 265.

Change from south to north recommended, *Moore* 4019——Objected to; it would be considered unfair to have a Nationalist tried by Orangemen, *Lloyd* 3197; *Hamilton* 3294——Bad as raising the religious question; it might have good results, but they would be dearly purchased, *Nelligan* 3346——Would be a very strong step to take; should not at all like it, *Justice Lawson* 4064——No doubt would create much dissatisfaction; but it is a choice of evils, and the only alternative would be suspending trial by jury, *Morris* 3665——So objectionable, that even that alternative would be preferable, *Justice Fitzgerald* 4212–3.

Proposal to empower Attorney General to change venue at his discretion, *Bolton* 3899, 3901; *Moore* 4009; *Justice Lawson* 4060——Objected to, as looking very invidious, *Justice Fitzgerald* 4199–4207——Preferred to present system, on certificate being made that the change is necessary, and that there is local feeling, *Kelly* 3048–9, 3104——Recommended in regard to agrarian cases, *Morris* 3663–7——In regard to cases of a political, religious, or agrarian nature, faction fights, and assaults on police, *Purcell* 97–8, 111.

Proposal to empower a single judge of the superior courts to change venue on application made, *De Moleyns* 1638, 1743–50——Objected to, *Hamill* 1791–1800——Failing discretion being left to Crown, would give power to other judges besides those of Queen's Bench; application might be made to a judge in chambers, *ib.* 2360–1.

Expediency of making applications for change of venue before counsel and witnesses are there ready for trial, *Gibson* 2360——The right of application should extend to the accused, *Justice Fitzgerald* 4199–4201.

Conclusion of Committee that in all crimes of a political or agrarian complexion it is desirable to offer every facility for a change of venue, and that the present mode of proceeding might with advantage be rendered more simple and expeditious, *Rep.*, paragraph 63.

VERDICT. Large experience of bad verdicts, but not enough to justify abolition of jury system, *Blake* 231——Unanimity almost hopeless at present in certain cases, *Byrne* 774——General want of confidence in verdicts, *Whelan* 1580.

Case of jury returning verdict of guilty on re-consideration, when sent back by judge, *Boyd* 2501–5——Bad verdicts chiefly caused by jurors straining principle of doubt in favour of accused, *Ferguson* 3393——Instances of wrongful verdicts, amounting to serious miscarriages of justice, *Bolton* 3840–71.

Verdict by ballot recommended if unanimity is dispensed with, *Buchanan* 402——The proposal objected to, *Justice Lawson* 4101–2.

Suggestion

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VERDICT—continued.

Suggestion to empower judge to refuse to accept perverse verdicts in criminal cases, *Gibson* 2361-6, 2384-9, 2421——The suggestion approved, *Ferguson* 3400——Only in extreme cases, and under present circumstances, *Neligan* 3488-90——Approved, in all cases where the conduct of jury was perverse, verdict or no verdict, *Elrington* 3793-8; *Moore* 3980——The suggestion disapproved altogether, *Justice Lawson* 4106——It would not have much effect, owing to present terrorism, *Hamilton* 3318.

Conclusion of Committee that the suggestion to empower judge to refuse to receive perverse verdicts would be objectionable, as superseding trial by jury in effect, while preserving merely its outward form, *Rep.*, par. 76.

See also *Acquittals. Convictions. Disagreements. JURIES (Character and Conduct).*

Verdict by Majority:

Objected to: it would almost always lead to an acquittal, *Blake* 239-41; *Morphy* 2109——Or to wrong verdicts by bad majority, *Huggard* 868. 956-8——Objected to decidedly in criminal cases; in civil cases more debateable, *Barry* 1352——It would not mend matters, or stop "jobbing" verdicts; religion would then step in, *Bence Jones* 573, 587-8.

Was recommended by witness in 1873, but not advisable now, *Justice Lawson* 4096-6; *Justice Fitzgerald* 4220-1.

Verdict of twelve out of fifteen would probably meet difficulties as to improper jurors; would certainly not have less than twelve to convict, *Buchanan* 397, 401——Similar recommendation as to Crown cases, *Moore* 3981.

Principle of unanimity defeats justice; if twelve are retained a majority of two-thirds ought to carry a verdict *Byrne* 775-7, 786——Similar conclusion, *Kelly* 3031——Would have one-third consist of special jurors, and two thirds of the whole jury fix the verdict, *Whitney* 2661-7, 2705-7——The Scotch system recommended as a remedy against contumacious jurors, *Whelan* 1571-4.

Conclusion of Committee that the reasons for a verdict by the majority do not apply to Ireland under present circumstances, *Rep.* paragraph 57.

Verdict of "Not Proven":—

Expediency of enabling juries to find such verdicts, *Gibson* 2421; *Boyd* 2540-1; *Kelly*, Note to Evidence *ad fin.*——Unnecessary, perhaps, at present, but would not object to it in good time, *Ferguson* 3376.

Vignoles, Capt. Evidence of, before Committee of 1839, referred to, *App.* A. p. 471.

W.

Warburton, Major George. Evidence of, before Committee of 1839, referred to, *App.* A., pp. 471-2.

Warburton, Mr. Shooting of, *Molloy* 711.

Warren, Mr. Justice. Rules issued by; as Attorney General, respecting exercise of challenge by Crown, *App.* A., p. 471——His Jury Bill of 1868, *ib.* pp. 472-3.

Waterford. Winter assizes at, *Slacke* 997, 1002, 1010——Rating generally high in, *Slacke* 1032——Favourable experience of jurors, *Barry* 1336, 1340——Close relations between town and rural districts, *ib.*

Land League associations in, *Slacke* 1011——Evidence as to city jurors, *Harvey* 823, and evidence *passim.*

Waterford Jurors' Association. Evidence respecting, *Edmondson* 491; *Harvey* 813 and *passim.*

Westmeath. Ribbonism in, *Molloy* 651; *O'Hagan* 2165-6; *Morris-Reade* 1071; 1085-96, 1102-3——Bad effects thereof on agrarian cases in, *ib.* 1051-3, 1067——Land League agitation in, *Molloy* 653; *Morris-Reade* 1073——Trial for "Boycotting," *Molloy* 654, 717——The county quiet from 1873 to 1878, *Morris-Reade* 1097.

Inferior class of jurors in, under new system, *Dowling* 3134-42——Their conduct unsatisfactory before 1871, *O'Hagan* 2165-70——Much deteriorated during last five or six years, *Morris-Reade* 1054-5.

Westmeath Act. See *Protection to Life and Property Act.*

Westmeath Committee, The. Evidence before, referred to, *Molloy* 637.

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Wexford. Superior character of jurors of, *Gibson* 2398–9.

Whelan, William Edward. (Analysis of his Evidence.)—Resident Magistrate at Portadown, in Armagh, for nearly 14 years, 1526–7——Opportunities of watching cases; has been all through Ireland, 1528, 1536——Personal experience extends to eight counties; to northern counties as regards party business, to western counties as regards agrarianism, 1537–8——Was resident magistrate in Mayo from 1868 to 1874; 1539, 1553.

Jurors much inferior as compared with former years; prevalence of party and case prejudice, 1530–1——In other cases they do their duty, 1565——Their prevailing fault is want of honesty, 1559.

Present qualification for counties approved, 1533, 1546, 1561——It is too low in towns; would raise it to 30 *l.* for all, 1538, 1542.

Suggestion to raise qualification for publicans from 15 *l.* to 30 *l.*; 1533, 1541–4——On reconsideration, would exempt them altogether from service, as unfit, 1550–2.

Recommends verdict by majority; if jury disagrees the case can be re-tried, 1571–4——In preparation of jury lists would fine poor-rate collectors and clerks of union for mistakes, 1574.

Importance of having a due mixture of Protestants and Roman Catholics on juries, 1579——Disbelief in the latter being excluded by raising the qualification, 1578.

Favourable experience of juries in Munster and in Galway, the town excepted, 1582–3——They are bad in Mayo, *ib.*

Disapproves a Commission of Judges: it would destroy confidence in the judges and be unfair to the prisoner, 1586.

Jury system has, to a certain extent, broken down, 1587——The only remedies would be to raise the qualification, and have verdict by majority, *ib.*

Power of Crown as to ordering jurors to stand by is ample to exclude undesirable jurors, 1569, 1587–90.

In party cases, very difficult now to get evidence, owing to sympathy rather than intimidation, 1593–4——Juries were always bad in such cases, 1545——In agrarian cases they are much worse since present agitation, owing wholly to fear, 1595.

Whiteboy Offences. Trial for, *Neligan* 3425.

Whiteside, Mr. Bills introduced by, when Attorney General, *App.* A., p. 472.

Whitford, Mr. Case of, *Corcoran* 3513.

Whitney, Benjamin. (Analysis of his Evidence.)—Is Clerk of the Peace and Crown for county Mayo; has filled the former office since 1878, the latter since 1867; 2542–3.

Considers the 6 *l.* town qualification, since 1876, too low; it should not be less than 10 *l.*, 2561–4——The county qualification might safely be reduced, if necessary, to 30 *l.*, 2565——If raised, it would be difficult to get enough jurors, 2557–8.

Preparation of jury lists complained of; need of greater care by officials in making returns, *e.g.*, names reappear, after being struck off on revision, 2565 8, 2683–4——Would inflict some statutory penalty for negligence, in preference to a fine, 2607–8, 2685–9——Annual revision sufficient, 2566.

Conduct of juries fairly satisfactory, except in agrarian cases since present agitation, 2569, 2632–3——In ordinary cases, like larceny, quite dependable, 2569–76——And in common assaults very fair, 2700–1.

Would have one-third of common juries consist of special jurors, 2577——Advantages of having them there, 2600–3——It would not be a cure, it is true, but a step in the right direction, 2660——They prefer being fined at present, to serving on common juries, 2581–3, 2593–9——A majority of two-thirds, on this composite jury, should carry a verdict, 2661–7, 2705–7.

Twenty peremptory challenges excessive, especially in petty larceny cases, 2583, 2679——They tend to exhaust panel, and exclude respectable jurors, 2584–6——Would not have more than six, when sentence does not extend to penal servitude, 2680–2.

Approves generally of increasing facilities for change of venue, 2589–92——Believes Dublin juries would be less open to intimidation, 2637–46.

Would extend magisterial jurisdiction generally, without drawing any line at stipendiary magistrates, 2647–53——Common assaults and small larceny cases should be dealt with summarily at petty sessions, 2694–6——The exercise of such extended jurisdiction should be made imperative, 2698–9.

Recommends raising the town qualification as the first remedy for existing state of things, 2654–8.

Winter

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Winter Assizes. Salutary effect of, as causing a change of venue, *Blake* 266-7; *Gibson* 2343, 2401; *Whitney* 2620; *Ferguson* 3397-9; *Justice Lawson* 4147.

Grouping of counties for, at Belfast, *Bottomley* 1314-7——And at Waterford, *Slack*, 997, 1002, 1010——For Connaught circuit, where held, *Whitney* 2621.

Experience of juries at Cork, December 1880, *Justice Fitzgerald* 4187-91.——Agrarian cases at Waterford, *Harvey* 825.

Witnesses. See *Evidence. Intimidation. VENUE, CHANGE OF.*

Y.

Young, Sir John. His Jury Bill referred to, *De Moleyns* 1698; *App.* A., p. 472.

Young, Mr. Murder of, *Kelly* 3117.

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